

CASE

NUMBER:

99-513

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CASE

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99-513

Clark Energy Cooperative, Inc.

Complaints - Service

Regular

OF DIMITRI VAUGHN TAYLOR

IN THE MATTER OF DIMITRI VAUGHN TAYLOR VS. CLARK RECC

SEQ NBR	Date	Remarks
1	12/21/99	Application.
2	01/05/00	Acknowledgement letter.
3	01/21/00	Order to Satisfy or Answer; info due 1/31
4	(M) 01/31/00	RESPONSE TO ORDER OF JAN 21,2000 (OVERT CARROLL CLARK ENERGY)
5	02/25/00	Order scheduling 4/4 hearing; sets procedural schedule
6	(M) 03/06/00	ENTRY OF APPEARANCE & MOTION FOR CONTINUANCE (PATRICK NASH ATTORNEY FOR COMPLAINAN)
7	03/14/00	Order revising procedural schedule; hearing rescheduled from 4/4 to 5/2
8	(M) 04/21/00	MOTION FOR EXTENSION OF TIME TO VERIFIED WITNESS TESTIMONY (PATRICK NASH DIMITRI VAUGHN TAYLOR)
9	(M) 04/21/00	MOTION FOR EXTENSION OF TIME IN WICH TO ANSWER TO SUBMIT DIRECT TEST (CLARK ENERGY COOP ROBERT ROSE)
10	04/28/00	Order cancelling 5/2 hearing and rescheduling for 6/1; discovery ext. 30 days.
11	(M) 05/15/00	ANSWER TO INTERROGATORIES (ROBERT ROSE CLARK ENERGY)
12	(M) 05/19/00	MOTION FOR EXTENSION OF TIME (PATRICK NASH)
13	(M) 05/22/00	NOTICE OF ADDRESS CHANGE (PATRICK NASH ATT FOR COMPLAINANT)
14	(M) 05/22/00	MOTION FOR EXTENSION OF TIME TO FILE VERIFIED WITNESS TESTIMONY & ANS (PATRICK NASH)
15	(M) 06/02/00	JOINT MOTION FOR EXTENSION OF DEADLINES & CONTINUANCE OF HEARING (PATRICK NASH ATT FOR DIMITRI TAYLOR)
16	03/28/01	Order entered; info due 4/27 or case dismissed without further order
17	(M) 04/30/01	STATEMENT & MEMO AS REQ BY ORDER DATED 3-28-01 (PATRICK NASH)
18	05/15/01	Order setting procedural schedule; schedules 6/26/2001 hearing
19	(M) 05/29/01	INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS (SHANNON MESSER/CLARK ENERGY)
20	(M) 06/12/01	TESTIMONY OF TAYLOR, KIRKWOOD, TAYLOR, SLONAKER, MYERS, AND TUTTLE (PATRICK NASH/DIMITRI VAUGHN TAYLOR)
21	(M) 06/12/01	ANSWERS TO DEFENDANT'S INTERROGATORIES (PATRICK NASH/DIMITRI VAUGHN TAYLOR)
22	(M) 06/12/01	DIRECT TESTIMONIES OF MESSER, PEYTON, AND MAYNARD (SHANNON MESSER/CLARK ENERGY)
23	(M) 06/19/01	RESPONSE TO DEFENDANTS MOTION FOR EXTENSION OF TIME (PATRICK NASH)
24	06/22/01	Order rescheduling 6/26 hearing to 7/12; schedules 7/9 IC; info due 7/5/2001
25	(M) 07/05/01	VERIFIED REBUTTAL TESTIMONY OF DIMITRI VAUGHN TAYLOR (DIMITRI VAUGHN TAYLOR)
26	(M) 07/05/01	VERIFIED REBUTTAL TESTIMONY OF MESSER AND SIDWELL (SHANNON MESSER/CLARK ENERGY)
27	(M) 08/03/01	Connie Sewell - TRANSCRIPT FILED FOR HEARING ON JULY 12,01
28	(M) 08/17/01	Donald G Thomas - Office Of The Marshall County Atty - WRITTEN BRIEF OF CLARK ENERGY
29	(M) 08/17/01	Patrick F Nash - POST HEARING BRIEF
30	10/15/01	Final Order; Clark Energy shall extend service to Complainant contingent upon Complainant providing reasonable access as described and willingness & ability to pay for his portion of costs of extension



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
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(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-513
CLARK ENERGY COOPERATIVE, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on October 15, 2001.

See attached parties of record.

Stephanie Bell

Secretary of the Commission

SB/sa
Enclosure

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-513
)	
CLARK ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

O R D E R

On December 21, 1999, Dimitri Vaughn Taylor ("Complainant") filed a formal complaint against Clark Energy Cooperative, Inc. ("Clark Energy") alleging that Clark Energy improperly refused him electrical service. Complainant alleges that prior to purchasing a plat of land on the Kentucky River, he contacted Clark Energy to inquire about extending electrical service along a set of lines and poles that at the time were out of use but did lead to Complainant's property. Complainant alleges that Clark Energy assured him that it would extend service to the property because it had the right-of-way to extend service. Complainant also alleges that Clark Energy told him to obtain a building permit. Based upon this alleged representation, Complainant purchased the property and applied for the necessary building permit. Complainant alleges, however, that prior to approval of the building permit, Clark Energy took down the poles and wires leading to his property and informed him that in order to receive electrical service, he must build a road to the property.

Complainant requests that he receive electrical service from Clark Energy without payment for construction.

FACTS

On May 22, 1997, Complainant purchased the property in question. Complainant claims that he purchased the property after confirming that Clark Energy would provide electrical service. On the day of purchase, Complainant went to Clark Energy in Winchester and filled out a membership application form and advised Clark Energy that at one time electric service was provided to his property.

Complainant's property is located in Clark County and is bounded by steep cliffs on three sides and by the Kentucky River on the fourth side. Complainant gains access to his property by boat or by walking across his neighbor's property. No road leads to Complainant's property and he does not have an easement across any neighbor's property for access to his property. Furthermore, a topographic map of Complainant's property reveals that the cliffs surrounding his property are approximately 100 feet high. Complainant wishes to have Clark Energy extend its lines down these cliffs to his property from a Clark Energy service line located within 1000 feet of Complainant's planned point of service.¹ The existing distribution line is at the top of the cliffs and part of the line that Complainant requests would have to cross the face of the cliffs.

¹ 807 KAR 5:041, Section 11(1), provides in pertinent part:

An extension of 1,000 feet or less of single phase line shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one (1) year or more and provides guarantee for such service.

To support its denial of service, Clark Energy relies upon 807 KAR 5:006, Section 14(c).² Clark Energy argues that unless Complainant builds a road to his property, upon which Clark Energy's trucks, equipment, and lines may travel, it is under no duty to extend electrical service to Complainant.³ Without such access, Clark Energy claims that it would be difficult if not impossible to repair downed lines, set poles, string lines, and read Complainant's meter.

In regard to the existing line and poles on Complainant's property, Clark Energy claims that the line has been long abandoned and that no part of the old line is intact or can be used to extend service to Complainant's property. Clark Energy claims that it was unaware of the existence of the line until informed by the Complainant. Upon learning of the line, and following an inspection, Clark Energy retired the line because it believed that the line posed a hazard to hikers. Clark Energy claims that the old line consists of wires, poles, and a transformer of a type that Clark Energy no longer uses.

² 807 KAR 5:006, Section 14(c), provides:

When a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service. Such action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 13(5) of this administrative regulation.

³ Section 18 of the Rules and Regulations of Clark County's Tariff provides in pertinent part:

The cooperative may refuse or terminate service to an applicant or member, after proper notice for failure to comply with the cooperative tariffed rules and regulations; Commission regulations; outstanding indebtedness; noncompliance with state, local or other codes; refusal to permit access; or refusal to pay bills.

Furthermore, the retired line and transformer reflected outdated electrical characteristics that do not reflect modern electrical usage.

Clark Energy also claims that it never gave Complainant an ironclad assurance that it would extend electrical service to his property. However, even if, as Complainant claims, Complainant relied upon this alleged representation, it would not bear upon the final outcome of this case. The issue presented here is whether Clark Energy's refusal of service complies with the applicable tariff provisions, regulations, and statutes, not whether Complainant relied upon Clark Energy's representation in purchasing the property.

The Commission held a formal hearing in this case on July 12, 2001. H. Howell Brady, Hearing Examiner for the Commission, presided.

DISCUSSION

Complainant complies with all applicable Commission regulations except for the issue regarding whether he is required to build a road to give Clark Energy "reasonable access" to his premises. 807 KAR 5:006, Section 14(c). Moreover, the Commission must determine whether the extension that Complainant requests is "reasonable." KRS 278.280(3) grants the Commission the authority to order an extension of service when, after a hearing, the Commission finds that such extension is "reasonable."

Complainant contends that Clark Energy can easily run a service line down the cliff to his planned home because the presence of the retired line proves Clark Energy did it once before. Clark Energy claims that its policy is to avoid situations in which an extension of service would result in part of a line being inaccessible to Clark Energy employees and equipment. Neither party disputes that running the line down the cliff

would result in a part of the line being inaccessible to Clark Energy's crew and equipment. Clark Energy claims that if Complainant does not build a road by which it may access Complainant's property, it would be forced to "hand set" the poles. This is an arduous process by which Clark Energy's crew would carry the poles down the cliffs and set them in the ground by hand. Clark Energy claims that it no longer sets poles by hand.

In his rebuttal testimony, Complainant claims that if Clark Energy does not wish to provide service by means of poles set directly on the cliff side, there exists a trail or former road that leads to his property from a neighbor's property. Complainant asserts that with minimal grading, clearing, and the installation of a culvert, Clark Energy's equipment and personnel could access his property.⁴ Complainant has neither requested nor obtained permission from his neighbor to build a road to his property.⁵ The proposed route for this road is approximately 4000 feet in length.

Complainant further asserts that, if this 4000-foot road is to be built, it is Clark Energy's responsibility to pay for the construction. Complainant relies upon Clark

⁴ Complainant does not propose that the road be paved, only that it be constructed in such a manner that it allows Clark Energy's trucks reasonable access to his property.

⁵ 807 KAR 5:006, Section 5(3), provides:

Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension administrative regulation.

Energy's standard service agreement, which provides that every Clark Energy customer give Clark Energy a perpetual easement and right of access over its lands for the maintenance and extension of service. The neighbor over whose property this alleged road would run is a Clark Energy customer. Complainant argues, therefore, that Clark Energy already has a perpetual easement over the neighbor's property and has a right and obligation to build the road.

The Commission, however, is not the proper body to decide whether Clark Energy's easement on the neighbor's property provides it with a right to construct a road in order to provide service to a prospective customer. A court of competent jurisdiction in Clark County would have to determine Clark Energy's rights under the easement.

Clark Energy states that, if Complainant pays for the construction of a 4000-foot road, then it is willing to extend electrical service to Complainant along the road. Complainant is unwilling to pay these additional costs, maintaining that he is entitled to free extension of service.

If the Commission ordered Clark Energy to extend service to Complainant by running the line down the cliffs, Complainant would pay nothing under the regulation for the extension because the extension is less than 1000 feet. However, the hazards involved in such an undertaking render this option less than reasonable. If, on the other hand, Clark Energy were required to pay all costs associated with extending service, acquiring easements, and building a road, the other Clark Energy customers would ultimately subsidize Complainant's extension.

The Commission concludes that an extension of service to Complainant's property should not lead down the cliffs. Although at one time the property received

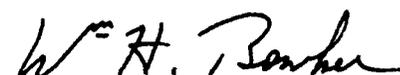
service from a line leading down the cliffs, such a line would create a significant safety concern to Clark Energy's employees who build, maintain, and repair its lines. The Commission finds that such an extension would not be reasonable because of safety risks and the problems posed by periodic meter readings. The Commission further finds that, in order to provide reasonable access to his property, Complainant must pay the construction costs necessary to enable Clark Energy's trucks to install and maintain the necessary equipment. It is inappropriate to require other customers to subsidize the costs of such construction.

IT IS THEREFORE ORDERED that Clark Energy shall extend service to Complainant contingent upon Complainant's providing reasonable access as described above and his willingness and ability to pay for his portion of the costs of the extension, including the acquisition of easements pursuant to 807 KAR 5:041, Sections 11(1) and (2)(a).

Done at Frankfort, Kentucky, this 15th day of October, 2001.

By the Commission

ATTEST:


Deputy Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 99-513

RECEIVED

AUG 17 2001

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

vs.

WRITTEN BRIEF OF CLARK ENERGY
COOPERATIVE, INC.

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

* * * * *

Comes now the defendant, Clark Energy Cooperative, Inc., by and through counsel, and hereby submits its Written Brief with respect to the above-referenced matter.

This matter was originally filed with the Public Service Commission against Clark Energy Cooperative, Inc. (hereinafter referred to as "Clark Energy") by Mr. Dimitri Vaughn Taylor (hereinafter referred to as "Mr. Taylor") on December 21, 1999, alleging that, although he had advised Clark Energy of the remote location of the property he purchased and Clark Energy originally told him that "it would be no problem" to provide electric service to Mr. Vaughn at that site, Clark Energy refused to provide electric service to his property.

A brief history of the developments and facts of this case is important before deciding this case on the merits. On May 22, 1997, Mr. Dimitri Taylor purchased an approximately 1½ to 2

acre tract of land fronting on both the Kentucky river and the mouth of Jouett Creek in Clark County, Kentucky, commonly referred to as the "Point", a small portion of property which is accessible only by boat unless easements or agreements for a road are entered into with the adjoining property owners. After purchasing the property, Mr. Taylor, on the same day, called and visited the offices of Clark Energy in Winchester, Kentucky and signed a membership application requesting service and advised that, at one time, service had been provided to the site. Clark Energy took down the information and set up a meeting between Mr. Taylor and a Clark Energy engineering representative. In accordance with the meeting plan, Mr. Taylor met with Todd Peyton, a member of Clark Energy's engineering group to review the location of the property and to determine the availability of service to the property in accordance with Clark Energy's rules, regulations and tariffs. They visited Mitchell Sidwell over whose property Taylor used to cross to reach the Point. While at Mr. Sidwell's place, Mr. Taylor described to Mr. Peyton that there were remnants of a very old power line at the campsite, but no electric service. It is interesting to note that at the time of the meeting with Clark Energy, Mr. Taylor was unable to provide access to the property via land access and Clark Energy was left to speculate about the location of the property, the existence and condition of the old power line and Clark Energy's obligation and ability to provide the requested electric service to the site. Taylor expressed to Mr. Peyton plans he had to build a road into the campsite during this

meeting. He further advised that he had not worked out the routing or location of the access road.

No activity occurred with respect to Mr. Taylor's request until September 1999, when Mr. Taylor called to request Clark Energy provide service to his campsite by way of the old abandoned poles used over thirty (30) years ago to provide electricity to the site. A review of the records of Clark Energy and the conversations with employees at Clark Energy as well as adjoining landowners determined that there had been no electric service to the location for at least 30 years. There, at one time, was a cabin on the property, but it burned some 30 years ago and was never rebuilt nor was service provided to the site. Clark Energy representatives then went to the site to determine the location and condition of the old-line route. A visual inspection of the apparently retired in place line determined that the conductor was down and broken, trees had grown around the conductor in places, there were broken and unsound poles, the transformer was not operational and was filled with bullet holes, and the insulators were not of the type needed to handle service under today's requirements.

Clark Energy confirmed that the power line was not intact and could not be utilized to provide electric service to the site in its condition and new conductor could not be installed to the existing poles, both based upon the condition of the poles and the inaccessibility of the route. Furthermore, it was determined that to allow the remnants of the line and route to remain in place

would create a hazard to hikers and rock climbers in this remote area. Clark Energy hired an independent contractor to remove the remains of the line. The contractor was unable to get trucks and equipment to the line route and had to remove the conductor, poles, transformers and insulators by hand and by having its employees haul most of the material out by foot.

Throughout the course of this entire endeavor, Clark Energy has been willing to provide service to Mr. Taylor provided he grant reasonable access to Clark Energy to the requested service site for the installation and maintenance of a power line and to pay all applicable line extension tariff charges associated with the construction and installation of the line.

A review of the file, the testimony and pleadings submitted in this case clearly indicate that Mr. Taylor's recollection of the events surrounding this complaint is somewhat sketchy as to the details and filled with contradictions. Discrepancies contained in Mr. Taylor's testimony include, but are not are limited to, his revelation that Clark Energy has men working the front counter when testimony revealed no men handle that aspect of Clark Energy's business; Mr. Taylor and Todd Peyton went to Hanley's house to look at Mr. Taylor's property when testimony from Todd Peyton and Mitchell Sidwell, by way of affidavit unequivocally established that Mr. Taylor went to Mitchell Sidwell's house to access the property; Mr. Taylor represented that he was told that a deed was a prerequisite for service when testimony from Clark Energy and the Membership

Application showed that was not the case; Mr. Taylor testified that he signed a required form for termination before applying for new service when, in fact, no such procedure exists; that a backhoe could be brought to the site to prepare the area when he has no access agreement with Mr. Hanley and Hanley states that it is not possible to get down to the site with vehicles or equipment; and finally, Taylor alleges electric service was readily available but in his testimony stated that Clark Energy wished to view the site to see "where we were going to run the electric."

Mr. Taylor attempts to confuse the issue and to persuade the Public Service Commission that the main issue to be decided in this case is whether or not Clark Energy and Mr. Taylor had reached an understanding with respect to Clark Energy providing service to Mr. Taylor; thus creating a binding contract between the parties that could be enforced in a court of law, or, in the alternative, appeal to the sympathies of the Commission arguing under a theory of equity that Clark Energy made certain representations concerning the availability of service to the site and that Mr. Taylor detrimentally relied upon those representations in purchasing the property expecting to receive electric service. However, Mr. Taylor's theory and his reliance on these theories and equitable relief is misplaced and should be set aside from consideration in this matter.

Regardless of Mr. Taylor's approach to this case, "the issue presented at this hearing as a result of Mr. Taylor's Complaint is whether Clark Energy's refusal of service complies

with the applicable tariff provisions, regulations, and statutes, which govern Clark's conduct and not whether Mr. Vaughn relied upon Clark Energy's representations concerning the availability of electric service in purchasing the property." The Public Service Commission in its Order dated March 28, 2001, set forth this issue and confirmed Clark Energy's position in this matter.

To adequately address these issues and to measure the appropriateness of Clark Energy's actions, one must first look to the standards and conditions that were applicable to and supported Clark Energy's decision determining that electric service to this location was not feasible or required.

807 KAR 5:006 § 14(c) states that "When a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service." Such is the case here. The administrative regulations contemplate that Reasonable Access is an essential element, which serves as a prerequisite for acquiring service and also serves as a condition for maintaining service.

What constitutes Reasonable Access is open to some interpretation. However, one must recognize that the definition of Reasonable Access continues to be modified as technology, equipment and machinery improve. Society has come a long way from the origins of the Rural Electrification Program in the 1930s. When the program began, it was not uncommon for local rural electric companies and representatives to walk proposed routes, design the

routes by diagramming them on paper, haul poles and conductor along the line route using mules, dig holes and set poles by hand, and install spans of conductor using mules to stretch the electric wire. Times are constantly changing and now technology and equipment provides for more advanced methods of determining location and allowing for the installation of the line. Computerized maps can now permit the utility company to design the route, equipment and line trucks are used to transport the materials to the site, equipment can now stretch the span and employees are able to attach the conductor to the poles by using bucket trucks. As the old saying goes "Georgia Mules and Country Boys are fading fast away", so are the antiquated times of installing overhead lines by hand. Thanks to technology and improved safety concerns for their employees, utility companies can now use advanced equipment to install and maintain power lines.

Reasonable Access as contemplated and practiced by Clark Energy means an ability to transport and position personnel, material and equipment, including, without limitation, digger trucks, bucket trucks and service trucks, needed to construct, install and subsequently operate and maintain the power line equipment and provide access to the customer's meter. This type of access is necessary to allow Clark Energy to provide reliable service, to be able to inspect the line to prevent loss of service, to allow for prompt responsiveness in the event of an interruption of power, and to inspect the customer's meter as required by Public Service Commission regulations.

Reasonable Access also allows Clark Energy to safely and routinely construct and maintain operations of a power line without exposing Clark Energy employees to hazardous conditions or have them engage in conduct which would place them in an unsafe environment.

Mr. Taylor bears the burden before the Commission that Clark Energy is required to provide electric service to Taylor's remote river front property. The basic considerations of this case which need to be weighed to determine if Reasonable Access has been provided or is available to Clark Energy in deciding what electric service, if any, must be provided to Mr. Taylor are (1) the location of the property and the terrain leading to the property for installation of a new line; (2) the condition of the existing line and poles which were removed by Clark Energy; and (3) the applicability of the line extension tariffs filed by Clark Energy, which sets forth the cost associated with a project of this magnitude.

First, the location of the property and condition of the terrain surrounding the property needs to be examined. Mr. Taylor originally reported on his complaint and later testified by way of verified direct testimony and at the hearing on July 12, 2001 that the river front property which he purchased, and to which he was requesting Clark Energy provide service, was landlocked and the only access to the property was by boat. The property in question is, according to Mr. Taylor, a peninsula bordered on three sides by water. This explains the initial disclosure and confirmation by

Mr. Taylor that boat access is the only method for reaching the property.

The ability to provide service to the site is further hampered, even if access was available, by the fact that the surrounding property is located in a flood plain. This fact was established by the testimony of Mr. Taylor and by the documents he filed and submitted concerning his septic disposal system. Essentially there would be **NO** access to the property and no ability to inspect and maintain the line during times of high water and wet seasons if a line was installed. In addition, in times of high water, the hazard of mixing energized power lines and water creates a potentially life-threatening condition to the Clark Energy's employees attempting to periodically inspect the line, maintain the line and repair interruptions of service, as well as the curious boater who by misfortune or accident may be electrocuted by getting too close to this situation.

In later disclosures and testimony, Mr. Taylor established his position that there was also foot access to the property. However, Mr. Taylor concedes that there is no road access to the property. In fact, Mr. Taylor testified at the hearing that "You can't drive a car there..."

Mr. Taylor, in describing how to get to the property testified at the hearing that the easiest way to get to the property was to "go actually through the farm at the end of Sidwell Lane (a private lane) and drive to the back of that farm, and then it's an easier walk in, as far as walking in, to drive almost

within a quarter of a mile of the Point." (parentheses added.) Although this is the "easiest" way to get to the property, Mr. Taylor has no written easement nor any oral agreements or permission to cross the adjoining property owners' land to access his property.

The "remote" location of this property was further confirmed by the testimony of Mr. Taylor's witnesses, including Donald Brent Myers, who, in his verified direct testimony, described the property as a "little remote piece of ground on the Kentucky River". Steven Slonaker testified that he would access the property by hiking on the adjoining property owner's farm and then hiking to Mr. Taylor's property.

Even Mr. Taylor's father, Grover Taylor, in his verified direct testimony stated the property his son wanted was to be in the country and "he wanted it to be remote, which apparently this was from his description." During cross-examination, Grover Taylor testified that although he believed access to be available by way other than boat, he has never walked to the property nor did he know where one would park before beginning a walk to the area. At no time did Grover Taylor ever indicate a road existed or that vehicle access was available to get to the site. To further support Clark Energy's position that the property was inaccessible except by boat or foot travel, Grover Taylor stated that building materials or a trailer would have to be airlifted in because of the remote nature of the property and the rough terrain surrounding it. This description is a far cry from the easy access Mr. Taylor would

have the Commission and Hearing Officer believe exists to the property.

Mr. Taylor described the condition of the terrain surrounding this property and the steep cliffs surrounding his little acre of "paradise". In his testimony, Mr. Taylor stated that the terrain where the poles ran holding up the retired line was a river palisade or in more common laymen's terms, a cliff.

This description was corroborated by Mr. James Maynard, a contractor for Clark Energy. Mr. Maynard described the property as being unlevel, containing rock cliffs and steep hills. The grade of the property was so great that one had to physically pull oneself up the cliff. In other places, one had to search to find the area of least resistance.

From the onset, it has been the position of Clark Energy that this property is not accessible for the purpose of providing electric service to the site.

Who would know more about the terrain and the accessibility to the Point than the adjoining landowners. Mitchell Sidwell, in his affidavit, stated that he is familiar with the property of Mr. Taylor and, in fact, Mr. Taylor used to cross Mr. Sidwell's property for the purpose of accessing his property at the Point. Mr. Sidwell confirms that there is no road access to the property and it can only be accessed by foot, horseback or boat. That same position was supported by Michael Hanley, the landowner who owns the property directly adjacent to Mr. Taylor's property. Mr. Hanley stated, in his affidavit, that the Point is a remote

location down the cliffs, bluffs and banks of the Kentucky River and that it is not accessible except by boat or foot. We recognize that Hanley has prohibited access to his river front property by horseback because of the steep grade and narrow path. Topographical maps of the Taylor campsite and surrounding vicinity filed by Clark Energy confirms the campsite is remote and very difficult to access.

The next aspect to consider is the condition of the poles and conductor that were in existence at the time of Mr. Taylor's purchase of the property. Clark Energy testified that plant growth had reclaimed the area, hiding the fact that remains of the old line existed. Shannon Messer testified that except for approximately 850 feet of an old power line that was accessible by an open field, there did not appear to be any evidence of a line to Mr. Taylor's property. In fact, there was no conductor at all attached to the poles where the line would have entered the wooded area at the edge of Mr. Hanley's field.

To confirm the condition of the line, Clark Energy personnel and contractors physically traveled down the cliff to find remnants of the line. Mr. Todd Peyton found two broken poles and one pole leaning badly. Conductor was tangled in the trees and interwoven in the branches of the growth and the line was still dangling in the air, supported only by the branches of the trees.

James Maynard, a contractor for Clark Energy testified that once on the site, he could not see any evidence of any right of way or existing power line. The crew would have to hunt for the

location of the next pole. Three of the poles used in the old service were broken at the time Mr. Maynard arrived on the scene to remove the retired line. With respect to the poles, Mr. Maynard testified that the crew was forced to cut some poles in sections, tie a rope around the pole and remove it from the brush and growth around it. The wire was in various stages of disarray and disrepair. Sections of the wire hung in trees, portions were still attached to the poles and gaps existed where there was no line at all. All wire that could be recovered was rolled up and carried out by hand as a result of the steep incline. There still remained, after the cleanup, approximately 500 to 1000 feet of conductor still hanging in the trees.

In any event, Mr. Maynard stated that the line was not serviceable and that all new poles would have to be set by hand, and new conductor installed along with new insulators and a new transformer.

Mr. Taylor, in his initial complaint and disclosures, would have one believe that the conductor was in excellent shape and capable of providing service if someone would just hook it up at the site. However, during cross-examination, the true condition of the poles and wires were described. Mr. Taylor admits that although there were some wires on the poles, he could not confirm if all wires were on the poles nor could he confirm the condition of the wires. With respect to the conductor still attached to the

poles, Mr. Taylor states that there were saplings and trees grown up in the conductor and were pushing the wires up in the air.

From the onset, Grover Taylor, the complainant's father, stated that the wiring was down and that there were trees growing up into the wires. On redirect, Grover Taylor stated that there were wires strung and hanging in the trees. Such descriptions of the old line are hardly the type of condition one would expect of an electric line maintained by a utility and capable of providing service to this campsite.

This same type of testimony was further provided by Donald Brent Myers, testifying on behalf of Mr. Taylor, who stated that he observed undergrowth having grown up into the wires. He described the growth particularly as being small saplings, which were entrenched into the wires. Wires were entangled in the treetops and laying on the ground.

The transformer was of additional concern. It was certainly not in a condition to carry out its intended purpose. Instead of being used to carry and supply electric current, it had been used for target practice and riddled with bullets. This fact was not only confirmed by the verified direct testimony of Clark Energy's representatives, but also by Mr. Taylor and Mr. Myers.

This line could not be used to provide service to the site and could not be salvaged. Mr. Hanley's affidavit explains that the wires of the old power line ended at the last pole in the field before entering the woods. Mr. Mitchell Sidwell states that

the line leading to Mr. Taylor's property had been down for years and he, in fact, had logged trees off of the conductor itself.

At all stages of this decision making process, the decision maker must be mindful of the fact that Clark Energy is willing and able to construct this line and provide electricity to Mr. Taylor provided he complies with the applicable regulations and tariffs that are uniformly applied by all utilities to customers. If Mr. Taylor provides reasonable access for Clark Energy's equipment to access the site without endangering the safety of Clark Energy personnel, Clark Energy will plan a new power line along an access road and easement in accordance with the Public Service Commission regulations and Clark Energy's approved line extension tariffs.

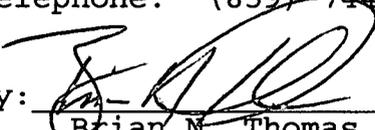
This case is not a simple matter of supplying electric service to a residence located in a subdivision. In fact, this case is not your typical rural connection. This case presents the situation where Mr. Taylor believes that Clark Energy is expected to perform the extraordinary, burdensome and daunting task of providing electric service to a remote campsite for the benefit of one person; a person who has no access to his property other than by river, a person who has no easements or permission to grant access to Clark Energy and a person who expects to receive service without cost. Mr. Taylor basically expects special treatment and accommodation as a customer of Clark Energy to enjoy benefits not available to the rest of Clark Energy's customers or benefits not commonly extended to any customer by any utility.

The burden of proof in this matter lies with the Complainant, Dimitri Vaughn Taylor. His position, which is erroneous and unsubstantiated, is that an implicit contract existed between the parties wherein Clark Energy promised to provide service to Taylor's property. Unfortunately for Mr. Taylor, he did not produce a single item of evidence to justify a finding on that issue, even if the contract argument was applicable to this case. To the contrary, Mr. Taylor's actions are inconsistent with his assertions. Mr. Taylor alleges all these promises made by Clark Energy occurred before he purchased the property, but the evidence clearly shows that the Membership Application, Clark Energy's job orders and notes are all dated after Mr. Taylor's property acquisition. Mr. Taylor wants the Commission to decide this case based solely on speculation and opinion, but this case must be decided on the facts as mandated by our system and the Commission's own administrative regulations. It is his responsibility to establish that Clark Energy has failed and/or refused to comply with its own rules and tariffs or in accordance with the statutes governing Clark Energy's operation before he can prevail. Mr. Taylor has testified to the time and energy he has spent in preparing to acquire a composting toilet and acceptable waste water discharge, yet he has failed to take similar action or interest in acquiring an easement for access notwithstanding Clark Energy's requirements before supplying service. Even if Clark Energy could build a new power line needed for electric service per tariffed policies and practices given reasonable access, it cannot at the

same time provide Mr. Taylor a road, needed for line construction, that would subsequently be used for access to the campsite. A review of the facts of this case and the supporting testimony provided by the parties leads the fact finder to only one decision - That decision is that Mr. Taylor's complaint must be dismissed and a finding entered in favor of Clark Energy determining that Clark Energy owes no duty to Dimitri Vaughn Taylor to install a power line to Mr. Taylor's property unless Mr. Taylor is willing to pay the applicable calculated line extension tariffs and provide reasonable access to Clark Energy to construct, install and maintain the power line. Installation, operation and maintenance of a power line and the reading of a customer's meter is not reasonable if access is only by boat and no access is available for trucks and equipment. Therefore, the defendant, Clark Energy respectfully requests this Commission to enter an Order consistent with that finding.

Respectfully submitted,

GRANT, ROSE & PUMPHREY
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Winchester, Kentucky 40391
Telephone: (859) 744-6828

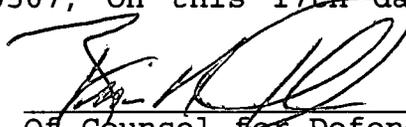
By: 

Brian N. Thomas

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion has been served by delivering a true and correct copy of same, by first class mail, postage pre-paid to Patrick F. Nash, 112 North Upper Street, Lexington, Kentucky 40507, on this 17th day of August, 2001.



Of Counsel for Defendant

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

NOISSIWO
COMMISSION
PUBLIC SERVICE

AUG 1 7 2007

RECEIVED

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

POST HEARING BRIEF

Comes the Complainant, by counsel, and pursuant to previous Orders of this Commission, and submits the following as his Post Hearing Brief.

I. REASONABLE ACCESS

The relevant inquiry is whether Clark Energy Cooperative, Inc. (hereinafter Clark) has reasonable access to provide electrical service to Vaughn Taylor's home on "The Point". Vaughn's access, which he has always asserted is only by water or by walking over land, is irrelevant.

a. Clark's Perpetual Easement

As was described at the hearing and in all previous pleadings¹, in order to reach Mr. Taylor's home site on The Point, Clark must run power lines across the property of Michael

¹Mr. Taylor has filed of record several pleadings, complete with legal authority, and also verified direct and rebuttal testimonies with exhibits. It will be presumed by the undersigned that the Commission has read and is familiar with all of the documents and exhibits filed of record and thus the undersigned will make every effort to avoid repeating what is already filed of record.

Hanley, who is one of their current customers. (Transcript of Evidence, page 112).² Michael Hanley, Vaughn Taylor and all Clark customers are required to sign an "Application for Membership and/or For Electric Service", a copy of which has been filed of record. This application requires all Clark customers to grant Clark "a perpetual easement and right and privilege of free access" across their properties. The perpetual easement is not limited to providing the landowner service, but specifically allows Clark access to the landowner's land "for the purpose of providing and/or extending electric service of any type to another member of the cooperative." Additionally, the perpetual easement is not limited to minor clearing work on the landowner's property. Instead, the perpetual easement allows Clark "free access, over, across, and through the land and premises" to "erect, construct, install, place, locate and build, and thereafter use, operate, inspect, repair, maintain, service, replace and move its electric distribution system, new or existing lines of any type, wires, poles, anchors or other appurtenant parts thereof". The perpetual easement gives Clark "the right and privilege to cut down and/or treat with herbicides any and all trees and bushes which are of such height and located in such proximity to the cooperative distribution lines that in falling may interfere with and/or create a hazard to the operation of said lines". The perpetual easement granted to Clark exists even after a customer cancels electrical service with Clark.

Legally, Clark has reasonable access to come onto the land of Vaughn Taylor, Michael Hanley, or anyone else in the area; to erect electrical equipment across that land; and to perform any clearing operations necessary to erect and access any of that equipment for the purpose of providing electrical service to Vaughn Taylor or any other customer. Via it's broadly worded

²Hereafter, references to the Transcript of Evidence will be designated "T.", along with the specific page number.

application, Clark has made sure to provide itself reasonable access to any and all properties in this locale.

b. Reasonable Access Via Existing Power Line Route

On the ground, Clark has reasonable access to The Point by at least two routes, the first being the route of the existing power line. It cannot be denied that electrical lines and poles can be run to The Point along the existing route because lines and poles were in existence just a few years ago before Clark unilaterally decided to cut them down. The unrefuted testimony is that at least several of the poles in the lines were in good condition, and that Clark has recently placed its identification tags on the poles. The testimony of record indicates that some or all of the conductor and transformers needed to be replaced on those poles, but several of the poles could have been used since poles in that same line and of that same vintage are currently in use. (T. 136, 165, 174).

It has consistently been Vaughn Taylor's contention that power service should have been made available to him along the existing route. That was his understanding until Clark decided to cut down the poles. At the hearing, Clark's own witnesses confirmed that reasonable access is available on this existing power line route. Mr. Maynard testified that he was able to walk the entire power line with the exception of "small areas" (T. 178), and that the entire line was accessible with a dozer. (T. 179-180). According to Mr. Maynard, the dozer could create a right-of-way along the existing power line route thereby creating access for electric company trucks. (T. 179-180). Mr. Maynard was the only Clark witness who spent a significant amount of time inspecting and working the entire length of the existing power line route.

As for the lower portion of the existing power line route³, testimony and photographs of record confirm that this portion could easily be made accessible to vehicles if the existing road bed is cleared with a chainsaw and weedeater and one small ditch is filled. (T. 52-54). Mr. Messner acknowledged that vegetative clearing is a normal activity engaged in by Clark. (T. 131). Thus, with a minimal amount of clearing work, utilizing a dozer, weedeater, and chainsaw, Clark could have precisely the type of vehicle access that it says it needs via the existing power line route. Requiring Clark to perform this minimal amount of work (which it has the legal right to perform pursuant to its perpetual easement) is appropriate.

The Commission should not be given pause by the idea that at one point along this existing route, a power line must be strung down a palisade and thus no Clark trucks would be able to drive directly underneath this span of power line. At times, Clark has attempted to argue that because the last pole on the top level of the power line route sends electric line over a palisade to the first pole on the bottom level of the route, and since it cannot drive its vehicles under this portion of the line, it does not have reasonable access. However, under cross-examination, Mr. Messner and Mr. Maynard admitted that Clark does not need, and in other areas does not have equipment access to all portions of its line. (T. 117-118, 161-162, and 172-173). Mr. Messner, after being asked seven (7) times (T. 114-116) also finally admitted that Clark did not require that all of its poles be set along a road. (T. 116). For all these reasons, reasonable access exists to Clark along the existing power line route.

³The Commission will recall that the existing power line route exists on two topographic levels. The highest level is on top of the palisades running from Michael Hanley's residence to the edge of the palisade. The lower level is below the palisades and on a level with Mr. Taylor's home site at The Point. From the last pole on the higher level, to the first pole on the lower level, electric conductor was previously strung down the face of the palisade.

c. Reasonable Access Via Existing Road

Even more importantly perhaps is the fact that reasonable access is available to Clark along a currently existing road from the home of Michael Hanley all the way to Vaughn Taylor's home site at The Point. Clark, by cutting down perfectly good poles, has created a situation where it must install new poles and lines. If it would rather have a road along the entire route of these new poles and lines, it simply need place those along the existing road across Michael Hanley and Vaughn Taylor's property. Clark, via its perpetual easement, has the legal ability to utilize this route.

Although it argued against this route at the hearing, Clark presented no evidence to refute the existence of the road from the back of Michael Hanley's house to The Point.⁴ By contrast, Mr. Taylor has testified describing this road, drawn the road on a map, and submitted photographs of the road for the Commission's consideration. As Mr. Taylor has testified, and as the photographs show, many sections of this road can currently be used by Clark's vehicles. Other sections can be driven across with a small amount of clearing work (i.e., a chainsaw to cut down saplings and a weedeater). Only one section of the road is currently impassable where a small drainage ditch needs a culvert. (T. 52-53.) With a minimal amount of work, Clark can drive its trucks from its last point of service at Michael Hanley's house to The Point. This constitutes reasonable access.

⁴None of the Clark witnesses who testified at trial had inspected this road. (T. 106, (Sidwel), T. 110 (Messner), T. 169 (Payton) and T. 178 (Maynard)). In addition, in the Affidavit of Michael Hanley, he does not discuss this road but merely states that a person cannot currently drive to The Point, which Vaughn Taylor acknowledges is true until a small amount of work is done on this road. As Mr. Taylor testified, Mr. Hanley frequently uses this road to ride his bike to The Point. (T. 40).

II. CLARK'S CONTRACTUAL OBLIGATION TO PROVIDE VAUGHN TAYLOR ELECTRICAL SERVICE.⁵

At the most basic level, a binding contract is created . . . “where a party makes an offer and another acts upon it..” *Messick v. Powell*, Ky. 236 S.W.2d 897, 899-900 (1951); *Cali-Ken Petroleum Co., Inc., v. Miller*, 851 Fd Supp 216, 217 (Wd Ky 1993).⁶ Prior to the time that Mr. Taylor purchased the property, he consulted with Clark and was promised that he could obtain electrical service once he became the owner of that property. This promise is clear, not only from the testimony of Vaughn Taylor and his father, but also from the testimony of Clark's employee, Scott Sidwell, who made important admissions at the hearing on this point. Scott Sidwell admitted that he was familiar with the property that Mr. Taylor was contemplating purchasing because he was a relative of Mr. Taylor's soon-to-be neighbor, Mitchell Sidwell. (T. 104-106.) Scott Sidwell also confirmed he promised Mr. Taylor that providing electrical service would “probably would not be a problem” and all Mr. Taylor had to do was “come in and sign up”. (T. 105.) Mr. Taylor fulfilled his end of the bargain. He obtained ownership of the property,⁷ and signed an ownership application promising to perform all of the duties necessary

⁵The parties have previously been informed by Mr. Pinney that the Commission does not have the authority to decide whether Clark is contractually bound to provide the electrical service. Mr. Taylor now advances this argument to preserve the record and to avoid later claims in Circuit Court that he did not exhaust his administrative remedies in regard to this argument. Further, the existence of a binding contract to provide electrical service is probative of the issue of whether Clark had reasonable access and whether it is reasonable for this Commission to order Clark to provide electrical service.

⁶Mr. Taylor has previously filed of record a more comprehensive brief addressing the binding nature of the oral contract that was reached between Vaughn Taylor and Clark. The undersigned will not restate the authority cited in that brief but incorporates it herein by reference.

⁷Mr. Messner attempted to assert at the hearing that a deed is not a prerequisite to providing electrical service. Certainly, Mr. Taylor agrees that a deed is not necessary if a person

to obtain electrical service. At this point, since Clark offered electrical service to Mr. Taylor and Mr. Taylor accepted and acted upon this offer, a binding contract was formed and “. . . the party making the offer is bound to perform his promise” under such circumstances. *Messick*, 236 S.W.2d 899-900.

That Clark made this promise is further evidenced by its own documents (filed of record as exhibits) which show: that Mr. Taylor was signed up as a “member”; that the installation of his electrical service was given a job order number; that employees of Clark drew Mr. Taylor a diagram of the equipment that he needed to install and referred him to an electrical inspector with whom they were familiar (William Perry); that Clark’s right-of-way was “okay”; that Clark’s existing poles would be used to provide service; and that Clark would initially provide temporary service.

The existence of a binding contract is evidenced by Mr. Taylor’s own actions. First and foremost he went ahead with the purchase of the property. Then, he made many of the arrangements to obtain necessary permits, including flood plain, sewer, gray water and building. (T. 36-37 and 55-56). Mr. Taylor and friends began some initial site preparation work for the home site. (T. 42 and 92). The direct testimonies previously filed of record indicate Vaughn Taylor’s frame of mind in this regard since he continuously and consistently represented to

is renting a piece of property or using property with the permission of the owner, and Clark’s Application provides for this eventuality. However, if a person is not renting or using with the owner’s permission, but instead is planning to purchase the property (as was Vaughn Taylor’s situation), it is disingenuous for Mr. Messner to argue that a deed is not necessary for obtaining electric service. In cases where a person is not the owner of the property but plans to buy it and live on it, it is of course necessary that proof of ownership be obtained before electrical service can be hooked up. It is entirely reasonable to expect that when Mr. Taylor informed Clark that he intended to buy a piece of property, employees of Clark would respond that they would hook up electric to that property once the purchase was complete and Mr. Taylor obtained a deed.

everyone that he had worked out the issue of electrical service and that such electrical service would soon be provided. (See direct testimonies filed of record).

Clark also acted as if a binding contract had been created. In addition to the generation of the paperwork described above and filed of record, Clark immediately sent its field representative, Mr. Payton, to perform a site inspection.⁸ An important admission in regards to Clark's post-contract action came in Mr. Messner's testimony at the hearing. Mr. Messner testified that it is Clark's normal practice to "retire" a line as soon as Clark has knowledge of the existence of an abandoned line. (T. 146-147.) Clark had knowledge of Vaughn Taylor's line in mid 1997. (T. 115 and 146.) However, Clark did not retire the line until October of 1999, over two (2) years later and less than one (1) month after Mr. Taylor told them that he was ready for electrical service. (T. 140-141.) The timing of Clark's decision to retire the line is consistent with Mr. Taylor's position that a binding contract had been entered into which Clark later decided to disregard. For two years, all of Clark's actions were inconsistent with its current position that the Taylor line was old and abandoned and that it never had any intent to provide electrical service along this line. For two years the actions of both parties were consistent with the existence of a binding contract to provide the promised service.

⁸Clark argued at the hearing that because Mr. Taylor described his initial meeting with Mr. Payton at the site as a meeting to determine where to "run the electric", that this is some sort of admission by Mr. Taylor that he knew the existing lines and poles could not be used. As Mr. Taylor explained, he used the phrase "run the electric" as a synonym for providing electric service or hooking up electric service. (T. 49-50). As Mr. Taylor has consistently stated throughout all of his testimonies and pleadings, it was his initial understanding that electrical service would be provided via the existing poles and lines. It was only after Clark cut down these poles and lines that Mr. Taylor was told by Clark that it would run electric from a different direction, and then was ultimately informed that it wouldn't run electric at all. As to the purpose of Mr. Payton's visit, Mr. Taylor made clear in his testimony that the meeting with Mr. Payton was at Clark's request and that he had no idea precisely why Clark wanted this meeting but presumed it was simply to examine the site. (T. 30-31, 40, 43, 45-46, 49-50, 52).

The bottom line is that there was a valid offer of electrical service, and a valid acceptance of such offer by Mr. Taylor and thus a valid and binding contract to provide electrical service. This contract should and must be enforced. Also, the existence of this valid and binding contract is further evidence to support the conclusion that it is reasonable and necessary for this Commission to order Clark to provide the promised electrical service.

III. CONCLUSION

This Commission should order Clark to provide electrical service to Vaughn Taylor for several reasons: first, because it promised and is contractually bound to do so; second, because it has done so in the past and obviously has the ability to do so again; third, because it has reasonable access to Mr. Taylor's home site via the route upon which the existing poles and lines were run; fourth, because it has reasonable access on the existing road that runs from the last pole on Michael Hanley's property to The Point and; fifth, because it has a perpetual easement across all lands in the area and thus has the legal ability to provide electrical service. It is Clark, and only Clark, that has reasonable access to The Point and it is entirely reasonable and fair to expect Clark to utilize this access to provide electrical service.

This Commission has the authority to order Clark to provide Vaughn Taylor adequate and reasonable electrical service. *Marshall Co. v. South Central Tel. Co.*, Ky. 519 S.W.2d 616, 618 (1975); *Carr v. Cinn. Bell Inc.*, Ky. 651 S.W.2d 126,128 (1983); KRS § 278.280 (3). Clark's own "Rules and Regulations" (filed of record) allow this Commission to order reasonable extensions of electrical service. See 14(f) of Clark's Rules and Regulations. Further, under Clark's Articles of Incorporation (previously filed of record) Clark has an obligation to provide Mr. Taylor electrical service under the circumstances of this case. See Article II (d). Finally, Clark is required to provide this service pursuant to KRS § 478.030(2) which mandates

that Clark "shall furnish adequate, efficient, and reasonable service". For all the foregoing reasons, Clark should be ordered to utilize its perpetual easement and provide Vaughn Taylor electrical service to The Point, either along the existing power line route, along the Michael Hanley road, or along any other route of its choosing.

Respectfully submitted,



PATRICK F. NASH
167 West Main Street, Suite 904
Lexington, Kentucky 40507
(859) 254-3232
ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 17 day of August, 2001 to:

Hon. Robert Rose
Hon. Brian Thomas
GRANT ROSE & PUMPHREY
51 South Main Street
Winchester, KY 40391
ATTORNEY FOR DEFENDANT



PATRICK F. NASH



COOPERATIVE

A Touchstone Energy™ Partner 

July 5, 2001

Mr. Thomas M. Dorman
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED

JUL 05 2001

PUBLIC SERVICE
COMMISSION

Dear Mr. Dorman,

Clark Energy wishes to file an original and eight (8) copies of the verified rebuttal testimonies of Shannon Messer and Scott Sidwell in the matter of Dimitri Vaughn Taylor vs. Clark Energy Cooperative, Inc., Case No. 1999-513.

Please contact me should you have any questions or need additional information.

Respectfully,



Shannon D. Messer
System Engineer

Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 05 2001

PUBLIC SERVICE
COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

v.

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

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CASE NO. 1999-513

VERIFIED REBUTTAL TESTIMONY
OF SHANNON MESSER

Came Shannon Messer, and appeared before the undersigned, Notary Public for the State at Large of Kentucky, and after having first been duly sworn, gave the following answers to questions written below:

1. Have you reviewed the Complainant's answers to Clark Energy's Interrogatories and Request for the Production of Documents in Case No. 1999-513 before the Public Service Commission?

ANSWER: Yes, I have.

2. Have you also reviewed the verified direct testimony of Mr. Taylor, his father, and several of Mr. Taylor's friends filed in connection with this case?

ANSWER: Yes, I have.

3. Do any inconsistencies exist within Mr. Taylor's answers to the interrogatories and the filed testimonies of Mr. Taylor, his father, and several of Mr. Taylor's friends?

ANSWER: Yes, many inconsistencies exist within the interrogatories and filed testimonies.

Aside from inconsistencies, the interrogatory response and testimonies also contain errors regarding what Clark Energy routinely informs customers about our requisites to obtain electric service.

4. Let's discuss these errors and inconsistencies. Beginning when Mr. Taylor first applied for electric service, please elaborate on the inconsistencies that exist in Mr. Taylor's statements alleging what Clark Energy representatives initially told him about his membership application.

ANSWER: Three inconsistencies immediately come to mind regarding his statements about his initial application for electric service. I'll explain them one by one.

First, Mr. Taylor states he visited Clark Energy's office in Winchester to inquire about the availability of electric service at his camp site on the banks of the Kentucky River prior to his purchase of the property and submittal of a membership application on May 28, 1997. He states an unknown Clark Energy representative told him providing electric service at the camp site would be "no problem" although he'd first have to present a property deed as a requisite for service when submitting a membership application. This statement is inconsistent with the fact that presentation of a deed to a particular property is not a Clark Energy requisite for electric service. In fact, the membership application Taylor signed even has an area for the applicant to check if he or she is or is not the owner of the property. We provide electric service to many members who do not own the property on which they reside. Our standard practice is as follows: Our customer service representatives would have recommended he go ahead and submit a membership application to save him another office trip during this alleged visit to Clark Energy. Our field engineers could then have met with him and assessed the availability and requisites for electric service without him assuming any obligations at that point. The fact is, according to documents already filed with the PSC in this case, Mr. Taylor first called Clark Energy to inquire about electric service and visited our office the same day, i.e. May 28, 1997, to sign an application for membership after he already closed on the property.

Second, Mr. Taylor states that an unknown Clark Energy representative told him electric service at his Kentucky River camp site would be "no problem" although he informed this employee that his property was "land locked" and he had no access to

the camp site other than by boat. Mr. Taylor would have the PSC believe that Clark Energy representatives, who's job it is to explain basic requisites for electric service, provided Mr. Taylor a blanket assurance of electric service without our field engineer first meeting him on-site to assess the availability of electric service and determining what would be required to extend electric service. Assuming for sake of argument his assertions are largely correct, our customer representatives would have at least recognized that his meter would not be accessible to meter readers. The fact is any statement by Mr. Taylor that his property was "land locked" and only accessible by boat would have raised a red flag to Clark Energy representatives, including myself.

Third, Mr. Taylor states in his testimony that a male Clark Energy representative gave him forms to terminate his existing electric service before signing him up for his new service. He goes on to say that after an unknown Clark Energy representative drew a picture of a temporary service, which we deny ever occurred, this same person told him he had to buy a meter. The inconsistencies here are that we don't have forms or any procedure to terminate his existing electric service before applying for a new service. Mr. Taylor didn't have service with us nor did we have any record of any service at this location. Another inconsistency is that Clark Energy does not have on staff, then or now, any male customer service representative at our Winchester office who helped him with his membership application. Finally, he states this same person informed him he had to buy a meter. Customers do not purchase any meters we set.

5. Will you now please elaborate on inconsistencies that exist in Mr. Taylor's statements alleging the availability of easements and access for and to his Kentucky River property?

ANSWER: Mr. Taylor says we approved his easement as "OK" on our internal job order form.

"OK" only records he signed a membership application providing us permission to be on and cross the property for purposes of building a power line to his site assuming, of course, we had reasonable access to the property. An easement only means we have his permission to enter and cross his property, apart from the issue of does he have reasonable, physical access to the site. Mr. Taylor states he only has access to

the site by boat, because you can't drive to the camp site. He states for the first time in his interrogatory response that there exists an old road in the vicinity of where the old, abandoned power line used to be. Mr. Taylor states this old road could be used for truck access to his camp site with a "minimal amount of clearing". The existence of such a road, however, contradicts Mr. Taylor's own testimony that he couldn't get a backhoe to the camp site to install a septic system. If a backhoe had no access to his property, then trucks and equipment have no access needed to build, maintain, and operate a power line or access to read his meter. Reasonable access for trucks and equipment to Mr. Taylor's camp site and all our power line facilities is required under PSC administrative regulation. We informed Mr. Taylor during our June 1997 meeting that Clark Energy will not build and maintain a road into his camp site. We informed him at the June 1997 meeting we'd meet with him again to plan construction of a new power line per our standard policies and practices after he provided a road into the camp site. The testimony of Mr. Taylor's own father and that of several of his friends corroborate that the camp site is indeed "remote", which I take to mean hard to reach or inaccessible other than by boat.

6. Will you now please elaborate on inconsistencies that exist in Mr. Taylor's statements regarding the condition of the old, abandoned power line?

ANSWER: Mr. Taylor asserts in the interrogatory response and testimonies that he, his friends, and family is not in the utility business and could not comment on the means and methods to extend electric service to the camp site. Apparently, they could ascertain the condition of the old line, which appeared "OK" to them. Mr. Taylor states in his testimony that he did not know where the old, abandoned power line route was after it left the vicinity of the river or whose property it crossed. He and his witnesses only offer their assessment of the condition of the old, abandoned power line on Taylor's property. So, how could they assess the condition of the rest of the old, abandoned power line when they didn't even know where it went to? Their testimony that the old right-of-way had grown up into the lines, some conductor was down on the ground,

and an old transformer was "full of bullet holes", and this is just on Taylor's property, corroborates our position that the old line wasn't "OK" and was abandoned over thirty years ago when the old cabin at the site burned down. Mr. Taylor knew about the general condition of the old, abandoned power line on his property when he first met with Todd Peyton, one of Clark Energy's field engineers, in June 1997. If, according to Taylor's testimony, all Clark Energy had to do was "just hook me up" why does he say in the same testimony he met with our field people to find out "where they were going to run the electric". Mr. Taylor knew he'd have to provide road access to his property so that Clark Energy could eventually build a new power line along the road.

7. Will you now please elaborate on inconsistencies that exist in Mr. Taylor's statements regarding his cost for Clark Energy to extend electric service to his property on the Kentucky River?

ANSWER: Mr. Taylor's testimony is we offered to "hook up his electric" if he paid Clark Energy up to \$22,000. Mr. Taylor's counsel, Patrick Nash also states in earlier filings to the PSC that Clark Energy offered to settle the complaint for this amount. Both are incorrect. Mr. Nash contacted Clark Energy's counsel, Bob Rose, to inquire what would be Mr. Taylor's line extension cost should he prevail in the PSC case. Per Mr. Rose's request, I prepared a memo dated July 28, 2000 outlining line extension costs and issues, which he then forwarded to Mr. Nash. A copy of this memo is included in Mr. Taylor's PSC filings. Mr. Rose later called me about an additional request he had from Mr. Nash about line extension costs. He said Mr. Nash requested information about proposed power line routing used to prepare the cost estimate. I prepared a follow-up memo dated August 17, 2000 that again outlined line extension issues and costs, but which also included maps of the Taylor property. A copy of the August 17th memo was not included in Mr. Taylor's filings to the PSC. A copy wasn't included because the maps clearly illustrate the topography of all approaches to the Taylor property, which corroborate our position that the property has no reasonable access other than by boat on the Kentucky River. I wish to attach both memos and maps as part of my testimony.

WHEREUPON, the verified direct testimony of Shannon Messer was concluded.



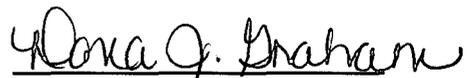
SHANNON MESSER

STATE OF KENTUCKY)
)
COUNTY OF CLARK)

Subscribed and sworn to before me by **SHANNON MESSER**, on this 5th day of July 2001.

My Commission expires:

April 15, 2004



NOTARY PUBLIC

Memorandum

To: Bob Rose, Esq.
Grant, Rose, and Pumphrey

From: Shannon D. Messer
Clark Energy Cooperative, Inc.

Date: July 28, 2000

Re: PSC Case No. 1999-513: Vaughn Taylor Complaint

Total distance of a new power line required to extend electric service to Vaughn Taylor's proposed residence is about 4,125 feet. This distance is only an estimate pending an actual survey of the final line route and assuming we have reasonable access to the property. Total line extension costs basically depends on if Taylor plans to construct a residence or a non-residence. Line extension costs may be summarized as follows:

1. Residences. The first 1,000 feet of line construction is free. The remaining 3,125 feet of line construction has an estimated cost of \$17,781.25. This cost can be refunded over a ten-year period in accordance with PSC regulations and Clark's approved line extension tariff.
2. Non-residences. The first 300 feet of line construction is free. The next 700 feet of line construction has an estimated cost of \$4,704.00. This portion of the total cost can be refunded over a four-year period in accordance with PSC regulations and Clark's approved line extension tariff. The remaining 3,125 feet of line construction has an estimated cost of \$17,781.25. This portion of the total cost can be refunded over a ten-year period in accordance PSC regulations and Clark's approved line extension tariff. Total construction cost is \$22,485.25.

At issue is what constitutes reasonable access to build a power line, not the difficulty associated with obtaining an easement. PSC regulation specify utilities must have reasonable access to build, operate, and maintain a power line to a customer and have reasonable access to the customer's meter. We do not believe reasonable access is available or practical in this case since Taylor asserts that access to his property is only "by boat". The above line extension costs assume we have reasonable access to build, operate, and maintain a power line and do not include any road construction costs. Similarly, the above line extension costs do not include any condemnation costs that may be required to procure all necessary easements. All costs are payable in advance of construction.

Memorandum

To: Bob Rose, Esq.
Grant, Rose, and Pumphrey

From: Shannon D. Messer
Clark Energy Cooperative, Inc.

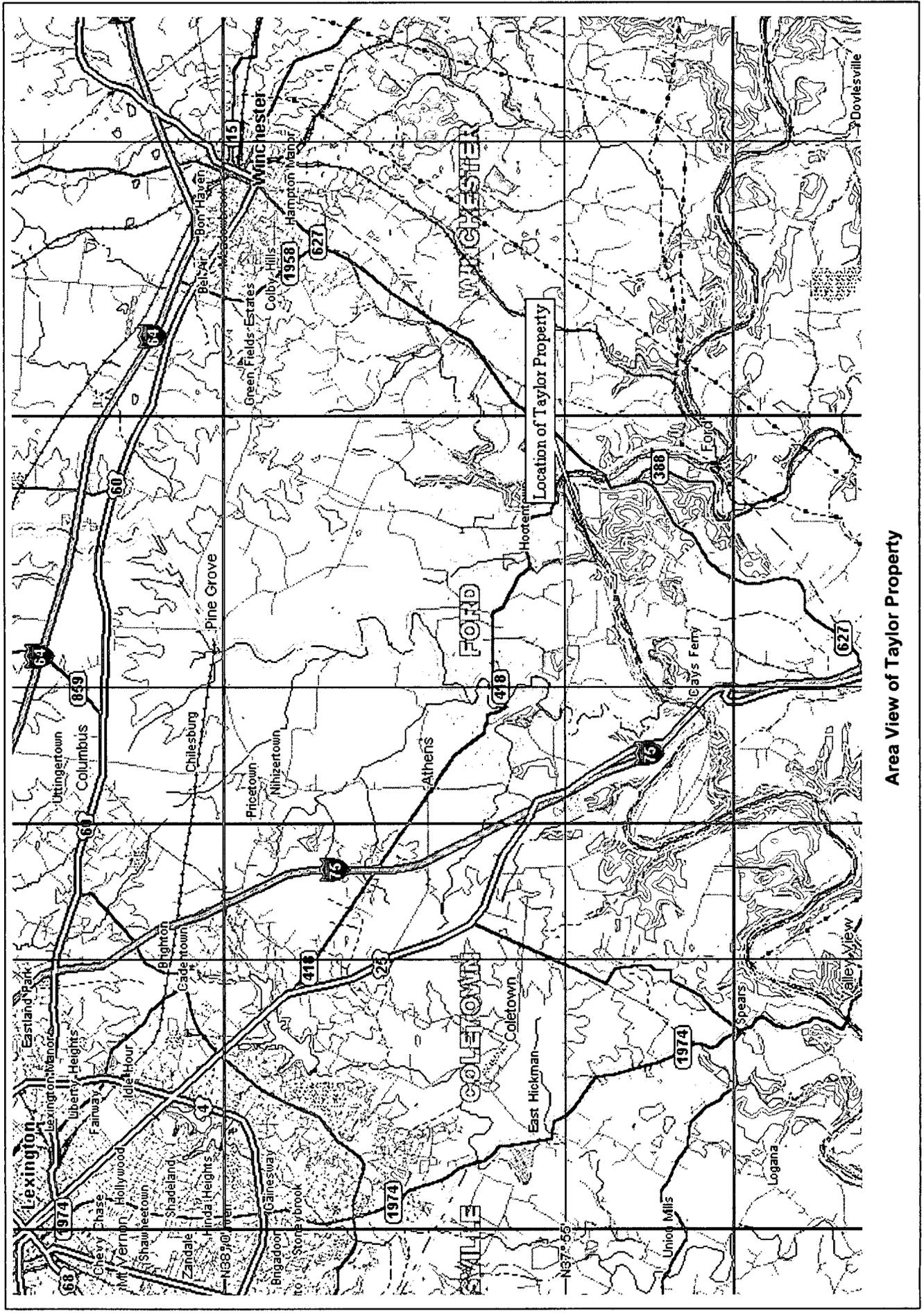
Date: August 17, 2000

Re: PSC Case No. 1999-513: Vaughn Taylor Complaint

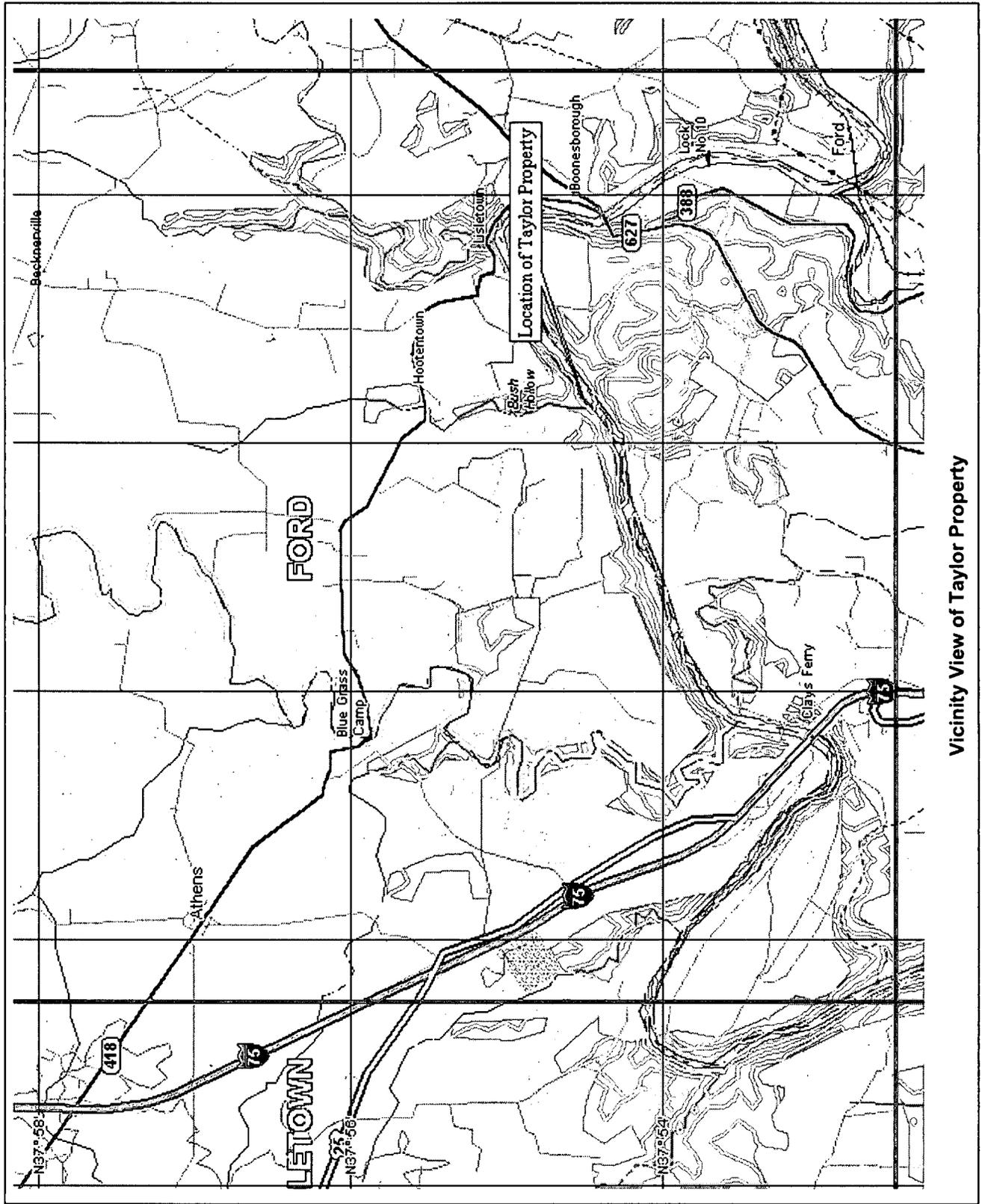
Vaughn Taylor and Todd Peyton, Clark Energy's representative, originally met at a local country store in June 1997 since Taylor explained the only access to his campsite was by boat on the river. They next visited a neighboring property owned by Mitchell Sidwell about a mile away from Mr. Taylor's campsite. The Sidwell property provided the closest access by foot, which Taylor sometimes crossed with Sidwell's permission in lieu of access by boat. Taylor expressed plans to build a road into the campsite from the Sidwell property during this meeting although he said he had not worked out any routing or easements. A new power line necessary to extend service was agreed to follow Taylor's planned road into the campsite area where he intended to build a cabin. The June 1997 meeting ended with no line route survey pending Taylor's development of his road and construction started on the cabin. A future meeting was agreed to be arranged after Taylor built his road. Clark Energy personnel would then begin planning a new power line along the road in accordance with PSC regulations and Clark's approved line extension tariffs. Refer to Clark Energy's response to a Public Service Commission (PSC) order dated January 21, 2000 regarding Case No. 1999-513 outlining Mr. Taylor's complaint about electric service availability.

Total distance of a new power line required to extend electric service to Vaughn Taylor's proposed residence is about 4,125 feet. This distance is only an estimate pending an actual survey of the final line route and assuming we have reasonable access to the property. Our estimate of line extension costs reported to you within my July 28th memo assumes Clark Energy will have reasonable access to build, operate, and maintain a power line. No road construction costs are included. Similarly, estimated line extension costs do not include any condemnation costs that may be required to procure all necessary easements. All costs are payable in advance of construction.

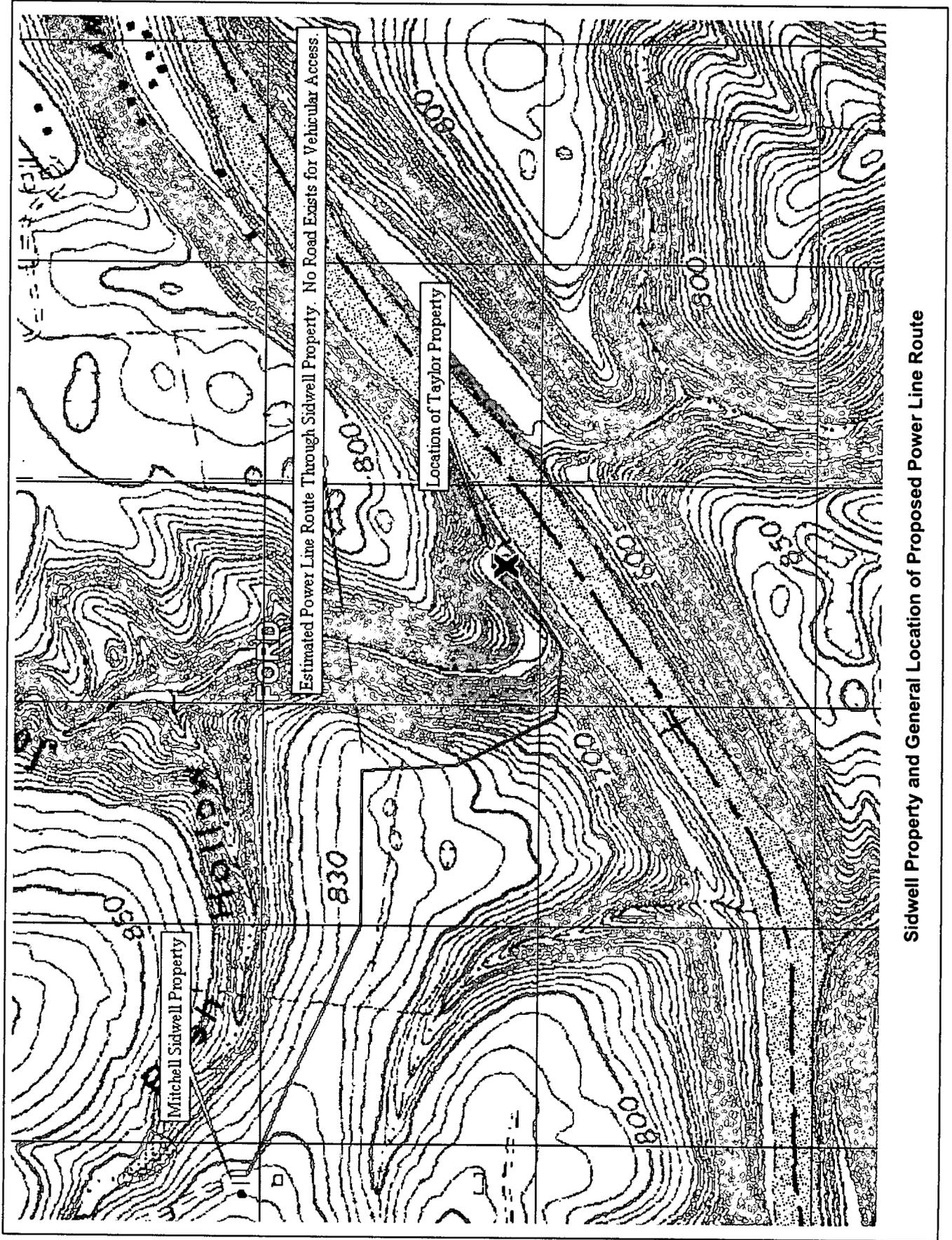
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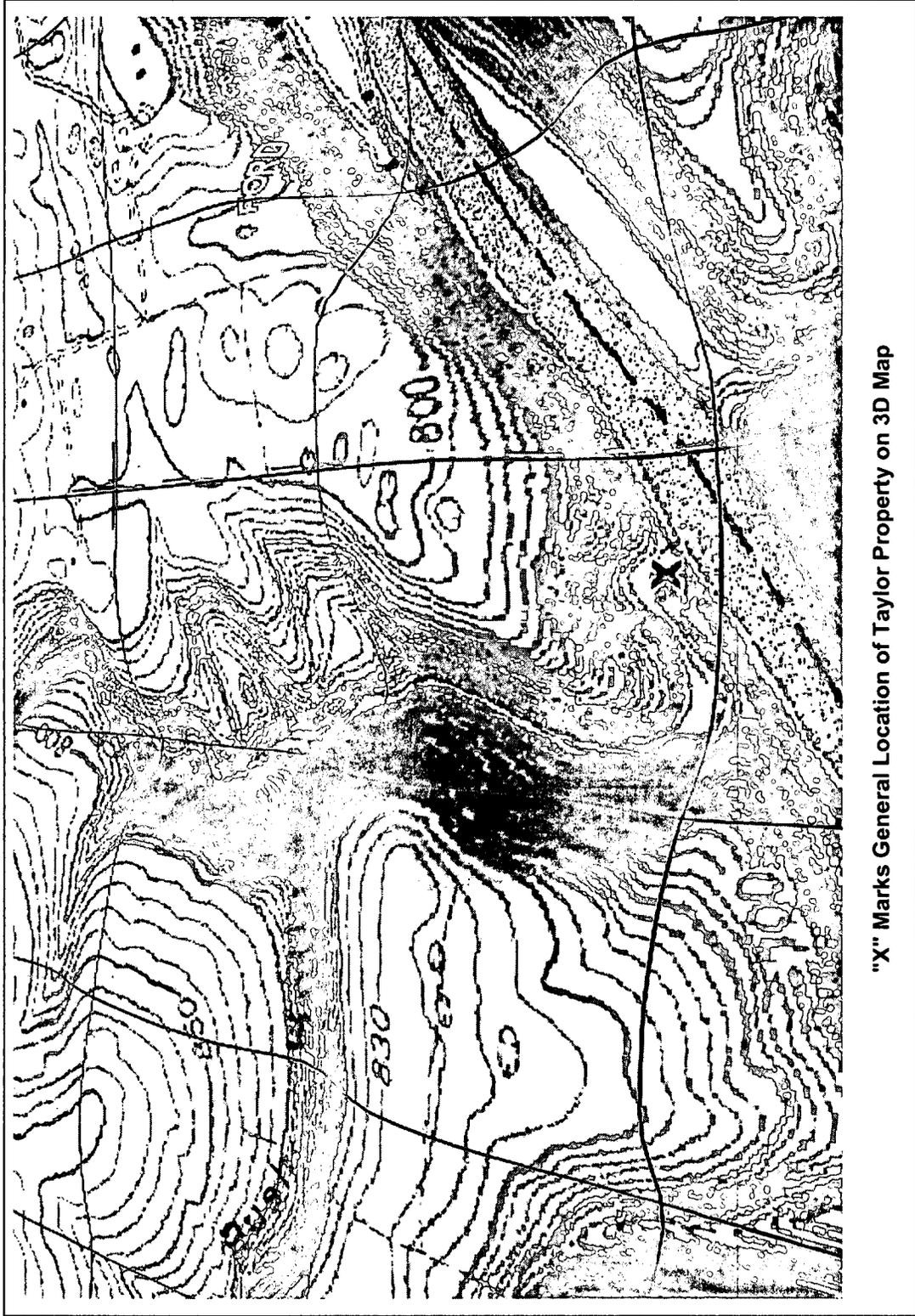
Area View of Taylor Property



Vicinity View of Taylor Property



Sidwell Property and General Location of Proposed Power Line Route



"X" Marks General Location of Taylor Property on 3D Map

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 99-513

RECEIVED

JUL 05 2001

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

vs.

VERIFIED REBUTTAL TESTIMONY
OF SCOTT SIDWELL

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

* * * * *

Came Scott Sidwell, and appeared before the undersigned, a Notary Public for the State at Large of Kentucky, and having first been duly sworn, gave the following answers to questions written below:

1. What is your name?

ANSWER: Scott Sidwell.

2. What is your occupation?

ANSWER: Operations superintendent for Clark Energy Cooperative, Inc.

3. How long have you been employed with Clark Energy Cooperative, Inc.?

ANSWER: I have been employed by Clark Energy for 29 years.

4. In your capacity as operations superintendent, what are your duties?

ANSWER: As operations superintendent, I am responsible for the coordination of new construction and the maintenance of overhead and underground electrical lines.

5. In your capacity as operations superintendent, did you ever have any conversations or personal meetings with Dimitri Vaughn Taylor?

ANSWER: Yes. Although I believe I have seen Mr. Taylor on one occasion, I have had no conversations with him face to face. I have, however, had a telephone conversation with Mr. Taylor.

6. What was the nature and subject matter of your conversation with Mr. Taylor?

ANSWER: Mr. Taylor called to determine if service was available to a piece of property he was looking at purchasing. I confirmed that Clark Energy serves the general area for the location where he was inquiring about service. I advised him that in order to determine if service could be provided, he would need to come in and sign a membership application. Upon signing the membership application, a field investigation would be conducted by Clark Energy personnel to determine if service can be provided to the site.

7. Have you had an opportunity to review the testimony of Dimitri Vaughn Taylor that he provided to the Public Service Commission?

ANSWER: Yes.

8. What inconsistencies exist in Mr. Taylor's testimony regarding the allegations that Clark Energy advised him ownership of the property was a pre-requisite for service?

ANSWER: At no time, in my conversation with Mr. Taylor, did I inform him that ownership of the property was a pre-requisite for service. In fact, Clark Energy Cooperative, Inc. has a number of individuals who receive service from Clark Energy who do not own the property but merely rent or lease the premises where service is provided.

9. What drawings, if any, did you make or provide to Mr. Taylor?

ANSWER: I made no drawings for Mr. Taylor. I have had the opportunity to review the drawing that Mr. Taylor alleges was provided to him by Clark Energy personnel. As operations superintendent, our operations department does not supply drawings for temporary service nor does it spell out the design necessary to acquire temporary service. The only drawings that would be provided to a customer would be supplying them with pre-printed professional documents.

10. What other male individuals would have provided information to Mr. Taylor regarding his request for service?

ANSWER: There would have been no other male employees in the department. Therefore, it is impossible that any other male individual would have assisted Mr. Taylor in his application.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

V.

CLARK ENERGY COOPERATIVE, INC.,

RECEIVED

JUL 05 2001

PUBLIC SERVICE
COMMISSION

COMPLAINANT,

CASE NO. 99-513

DEFENDANT.

VERIFIED REBUTTAL TESTIMONY OF
DIMITRI VAUGHN TAYLOR

Comes Dimitri Vaughn Taylor, and having been sworn by the undersigned Notary Public for the State of Kentucky, answers the following questions under oath:

Q1. State your name and how you are involved in this case.

A. My name is Dimitri Vaughn Taylor and I am the complainant in this case.

Q2. Have you reviewed the Verified Direct Testimonies provided by Clark Energy Cooperative, Inc. in this case.

A. Yes..

Q3. Let's start with Todd Payton's testimony. He has testified that you acknowledged to him that the electrical lines and poles providing services to your property were "not in good shape" and that several of the poles were down. Is this an accurate statement?

A. No. I made no such statements to Mr. Payton. In fact, by my observations, and as I have repeatedly stated, the lines and poles were in good shape and I have taken photographs to show this, and will attach them as exhibits.

Q4. Mr. Payton has testified that it was the understanding of the landowners in the area that the electrical line to your property was abandoned many years ago and that no electrical service was available in the area. Although Mr. Payton does not specify who gave him this information, does that comport with your understanding of the attitude of people in the area?

A. No. I have spoken with several people in my area, including Steven Slonaker whose testimony we have previously provided, and have discovered that people in the area believe that the electrical poles and lines to my property were in good condition and that electrical service was easily available.

Q5. Mr. Payton testified that after his last meeting with you in 1997 you knew that you could not get electrical service until you started construction of your home and until you had built an access for Clark Energy. Is this accurate?

A. No. Clark RECC did not demand that I build a road until 1999, when I had met or was about to meet all of their other prerequisites for service. As to the beginning of construction, Clark RECC has never made this a prerequisite and Mr. Payton's testimony is the first that I ever heard about this prerequisite. Apparently Clark RECC is even now adding new prerequisites to obtaining electrical service.

Q6. Mr. Payton testified that at the conclusion of your last meeting with him, that you were to have another meeting so that you could report on your progress in building the road and obtaining an easement from your neighbor Mitchell Sidwell. Is this accurate?

A. No. After my meeting with Mr. Payton, it was my understanding that electrical service would be provided. No one told me that there was any requirement of an easement from Mr. Sidwell. Again, Clark RECC is apparently now creating new requirements for electrical service. Up until I read Mr. Payton's testimony, I had no idea that Clark RECC was going to

demand an easement from Mitchell Sidwell.

Q7. Mr. Payton has testified that there is no evidence of any right-of-way easement or clearing on your property, or on the property leading to your property. Is this accurate?

A. No. There is a road that leads across the face of some of the cliffs and down to the lower level of ground upon which my property is situated. I have taken photographs of this road and will attach them as exhibits. Additionally, one can observe how the right-of-way easement has been cleared of large trees in the past. Parts of the easement have not been cleared recently and some weeds and small trees have grown up, but these could be cleared away without much effort. Again, I have taken pictures of the condition of the easement and will attach them as exhibits.

Q8. Now let's talk about the testimony of James Maynard. As with Mr. Payton, Mr. Maynard has testified that the route down to your property was overgrown with no clear right-of-way. Is this accurate?

A. Again, part of the route is a cleared road and part of the route is overgrown somewhat, but there is a very definite route that one can observe and that I have taken pictures of, which I attach as exhibits.

Q9. Mr. Maynard testified that there was no way to get a vehicle down to the site. Is this accurate?

A. Not entirely. As my photographs show, there is a useable road in existence for part of the way down, and there is a right-of-way that, with minimal clearing could be used again for another portion of the way down. So, with very little effort, a vehicle could be driven much of the way down to my home site. In fact, I have been told by people in the area that they have in the past observed vehicles parked at my home site.

Q10. Mr. Maynard has testified that his men had to carry wire up a cliff and that in areas, the grade is so steep that a man has to pull himself up a cliff. Is this accurate?

A. No. There are cliffs around and on my property. If you want to, you can climb up and down these cliffs. However, as my photographs show, there is a road and a cleared right-of-way circling around the cliff and persons could either walk or drive in this way without climbing up and down cliffs.

Q11. Mr. Maynard has testified that the area is so overgrown that a person could not walk in a straight line but has to detour around "basically finding a path of least resistance". Is this accurate?

A. No. There is a cleared road and a cleared walking path all the way to my property. My photographs show this.

Q12. Lastly, let's talk about the testimony of Shannon Messer. Mr. Messer has testified that the poles and electrical equipment in the area presented a hazard to hikers and rock climbers. Is this accurate?

A. No. The poles that I observed were in good condition and all electrical wires and equipment was supported by these poles. Prior to these poles and wires being cut down, I never observed any portion of them that would be hazardous to anyone. After the wires and poles were cut down and left lying on the ground all over my property, then they definitely were hazardous. I am still picking up pieces of wire and electrical equipment to this date that was simply left on the ground. I am submitting some of the pieces as exhibits.

Q13. Mr. Messer testified that the ground in the area is uneven and unlevel and thus electrical service cannot be provided. Is this accurate?

A. Not entirely. Certainly, some parts of my property are uneven and not level. However, many parts are level and as my photographs show, there is a cleared road and foot path to my property that is very easy to negotiate.

Q14. Mr. Messer describes your property being an "unsafe environment" and "presents hazardous conditions" for Clark RECC employees. Is this an accurate description of your property.

A. No. My property is no different than any of the other area property to which electricity is provided. It is situated on the river and is mainly wooded. There are some steep areas, but there are also many flat areas, roads and paths. I know of nothing unsafe or hazardous on my property. In fact, my young son and I and many of my friends and their children camp, hike and spend time there frequently. Neither myself, my friends nor any of the children that go there have ever been injured or harmed in any way. We would not take children there if the area was hazardous or unsafe.

Q15. Okay, let's talk about these pictures that were taken. When and under what circumstances were they taken.

A. On June 25, 2001, my attorney Patrick Nash and I went to my property to look around and take pictures. The pictures that I am submitting were taken on that day and fairly and accurately represent the current condition of the property and accurately show the condition of the property as it has been since I have owned it with the exception of the cutting down and removal of the electrical poles and equipment.

Q16. On that day when you and Mr. Nash walked around your property, were you able to move above freely or did you have to wind around as described by Mr. Messer?

A. We walked around freely on the cleared paths and cleared roadway.

Q17. Alright, tell me about these pictures.

A. The first picture which I will label Plaintiff's Exhibit A, is a picture of the first pole on my property situated nearest to my home site. This picture shows the stump of the pole still in the ground, and a section of the pole that was cut and left lying next to it. The picture shows that the pole was solid, and well coated with creosote.

Q18. What does Plaintiff's Exhibit B show?

A. Exhibit B shows the stump of the second pole on my property. This is the same pole that is pictured in Exhibit 1 to the deposition of Donald Brent Myers.

Q19. What is Plaintiff's Exhibit C?

A. Exhibit C is a close up of the stump of the second pole on my property. As with the first pole, it can be seen that the second pole was in good condition and well coated with creosote.

Q20. What is depicted in Plaintiff's Exhibits D, E and F?

A. These are solar panels that I have installed at the home site. Since Clark RECC has refused to provide electricity as promised, I have resorted to the solar panels to obtain a small amount of electricity at the site.

Q21. What is Plaintiff's Exhibit G?

A. Exhibit G is a set of iron stairs that leads from my home site down to my boat dock area on the river. I am offering this exhibit to show that this is a viable home site area that was used as such in the not so distant past.

Q22. What is Plaintiff's Exhibit H?

A. This is the well-cleared and used path from the home site towards the road that winds its way up the side of the hill. The utility poles on my property were situated along this

path.

Q23. What is Plaintiff's Exhibit I?

A. This is a picture of a third pole that was cut down. As with the other poles, it can be seen from this picture that the pole was and is in good condition and well coated with creosote. Also, this picture shows the ground wire that was still attached to the pole.

Q24. What is Plaintiff's Exhibit J?

A. This is a close up shot of the ground wire that runs the length of the third pole.

Q25. What are Plaintiff's Exhibit K and L?

A. These exhibits show the road that runs along the face of the cliffs and to the top of the property. This road is not on my property but is on a neighboring property. These photographs show that the road is well cleared and even has two tire tracks. As you are looking at these pictures, the cliff face is on the left. Exhibit L shows a rock retaining wall built to the right of the road to keep it from eroding away.

Q26. What is Plaintiff's Exhibit M?

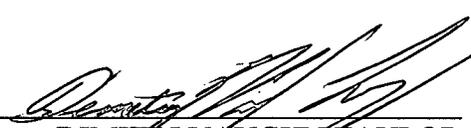
A. In between the cleared foot path and the cleared road, there is a section of road that hasn't been recently cleared. Exhibit M shows the road bed running between the trees. As can be seen in this picture, some weeds and small saplings have grown up in the road bed. However, in my opinion, these could be easily cleared away with a trimmer and the occasional use of a chain saw. Certainly, a bush hog could very easily clear this road bed.

Q27. What is Plaintiff's Exhibit N?

A. This picture is a little bit out of order. This is just another piece of equipment that was formerly in place, and left by Clark RECC when they "cleared" all their equipment from my property. This is a rigid section of the support cable which supported the second pole on my

property. As can be seen from the picture, this section of support cable is not rusted or deteriorated in any way, and is in good and useable condition.

WHEREUPON, the Verified Rebuttal Testimony of Dimitri Vaughn Taylor was concluded.



DIMITRI VAUGHN TAYLOR

STATE OF KENTUCKY
COUNTY OF FAYETTE

This Verified Rebuttal Testimony was subscribed, sworn to and acknowledged before me, the undersigned authority by Dimitri Vaughn Taylor on this the 5th day of July, 2001.

My Commission Expires: 8/26/03.



NOTARY PUBLIC
State-at-Large, Kentucky



EXHIBIT
A



EXHIBIT
B

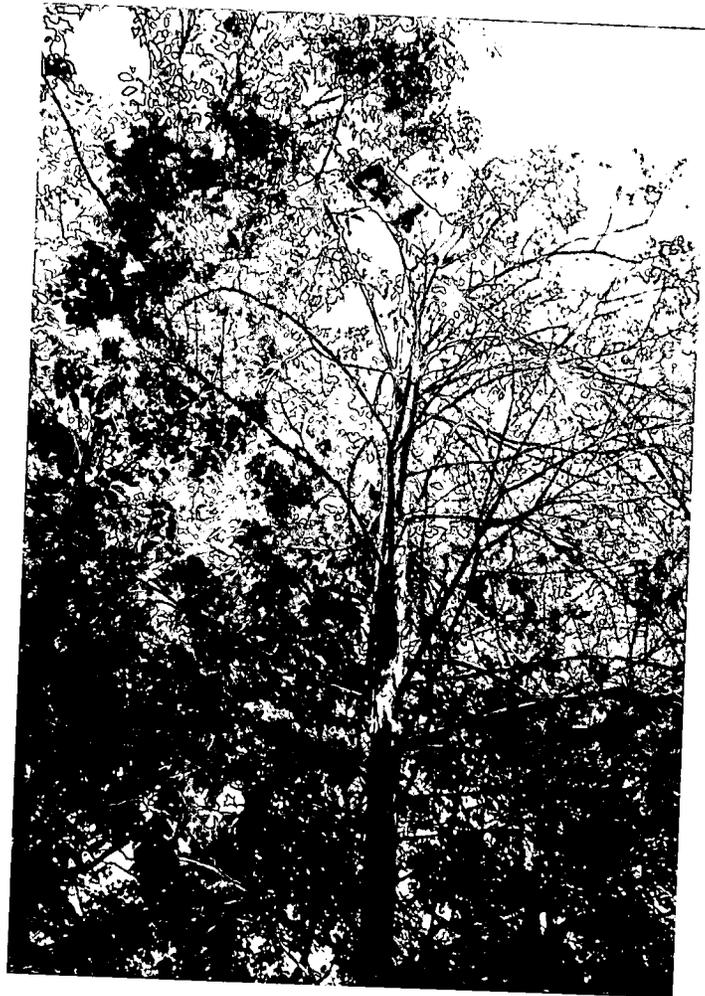


EXHIBIT
C



EXHIBIT
D

TAMARIS



EXHIBIT

 E



EXHIBIT
F



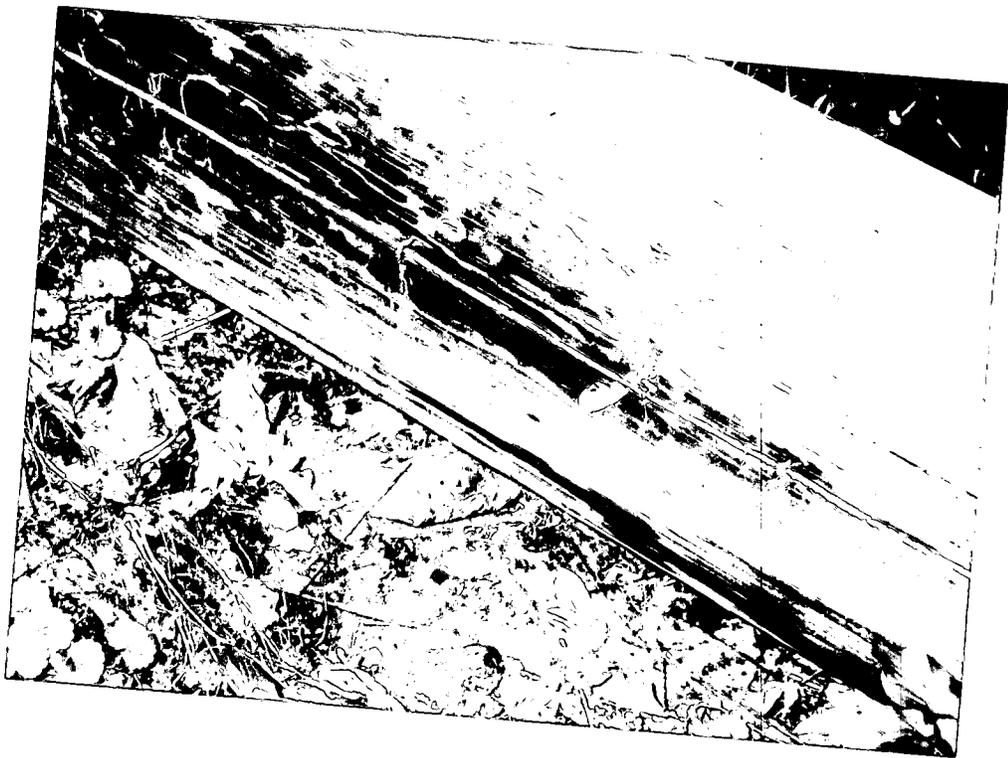
EXHIBIT
G



EXHIBIT
H



EXHIBIT
I



EXHIBIT

J



EXHIBIT
K



EXHIBIT
L



EXHIBIT
TALKING
m



EXHIBIT
 N



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

June 22, 2001

To: All parties of record

RE: Case No. 1999-513

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P. O. Box 748
2640 Ironworks Road
Winchester, KY 40392 0748

Dimitri Vaughn Taylor
P. O. Box 4242
1220 Enterprise Drive
Winchester, KY 40391

Honorable Patrick F. Nash
Counsel for Dimitri Taylor
112 North Upper Street
Lexington, KY 40507

Honorable Robert L. Rose
Attorney for Clark Energy
Grant, Rose & Pumphrey
51 South Main Street
Winchester, KY 40391

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-513
)	
CLARK ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

O R D E R

Defendant has moved for an extension of time in which to file rebuttal testimony and has also moved for a continuance of the hearing scheduled for June 26, 2001 due to the absence of witnesses and utility representatives. The Commission, finding good cause, grants Defendant's motions.

IT IS THEREFORE ORDERED that:

1. An informal conference in this matter is scheduled for July 9, 2001 at 1:00 p.m., Eastern Daylight Time, in Conference Room 2 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.
2. The formal hearing in this matter is rescheduled from June 26, 2001 to July 12, 2001 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 2 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, and shall continue until completed.

3. On or before July 5, 2001, each party shall file with the Commission in verified form the testimony of any rebuttal witness that it expects to call at the formal hearing.

4. All provisions of previous Commission Orders that do not conflict with this Order remain in effect.

Done at Frankfort, Kentucky, this 22nd day of June, 2001.

By the Commission

ATTEST:



Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-513
)	
CLARK ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

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4. All provisions of previous Commission Orders that do not conflict with this Order remain in effect.

Done at Frankfort, Kentucky, this 22nd day of June, 2001.

By the Commission

ATTEST:



Executive Director

99-5B

PATRICK F. NASH

ATTORNEY-AT-LAW

167 WEST MAIN STREET, SUITE 904
LEXINGTON, KENTUCKY 40507

(859) 254-3232
FAX: (859) 225-4746

June 15, 2001

Kentucky Public Service Commission
211 Sower Blvd.
P O Box 615
Frankfort, KY 40602

RECEIVED
JUN 19 2001
PUBLIC SERVICE
COMMISSION

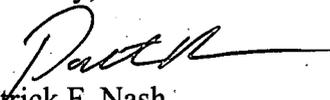
RE: Taylor v. Clark Energy Cooperative

Dear Sir or Madam:

Find enclosed an original and 10 copies of Complainant's Response to Defendant's Motion for Extension of Time.

If you have any questions or need anything additional, please call my office.

Sincerely,


Patrick F. Nash

PFN/clw

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
JUN 19 2001
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

RESPONSE TO DEFENDANT'S MOTION FOR EXTENSIONS

Comes the complainant, Dimitri Vaughn Taylor, by counsel, and in response to the defendant's motion for various extensions would state that complainant will be ready for the formal hearing as scheduled on June 26, 2001.

However, if this Commission determines to grant the requested extensions, complainant would request that it not be scheduled during the undersigned's existing trial commitments. The undersigned attorney has matters scheduled for the following dates:

- July 2, 2001
- July 16 - 19, 2001
- July 23 -25, 2001
- July 30 - August 3, 2001
- August 6 - 14, 2001 (vacation)
- August 22, 2001
- September 17 - 25, 2001

Also, should this Commission grant the requested extension of time to file rebuttal testimonies, the complainant would request that he be granted the same extension.

Respectfully submitted,



PATRICK F. NASH
167 West Main Street, Suite 904
Lexington, Kentucky 40507
(859) 254-3232
ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 15 day of June, 2001 to:

Hon. Robert Rose
GRANT ROSE & PUMPHREY
51 South Main Street
Winchester, KY 40391
ATTORNEY FOR DEFENDANT


PATRICK F. NASH



COOPERATIVE

A Touchstone Energy™ Partner 

June 12, 2001

Mr. Thomas M. Dorman
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED

JUN 12 2001

PUBLIC SERVICE
COMMISSION

Dear Mr. Dorman,

Clark Energy wishes to file an original and eight (8) copies of the verified direct testimonies of Shannon Messer, Todd Peyton, and James Maynard in the matter of Dimitri Vaughn Taylor vs. Clark Energy Cooperative, Inc., Case No. 1999-513.

Please contact me should you have any questions or need additional information.

Respectfully,

A handwritten signature in black ink, appearing to read "Shannon D. Messer".

Shannon D. Messer
System Engineer

Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 99-513

RECEIVED

JUN 12 2001

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

vs.

VERIFIED DIRECT TESTIMONY OF
JAMES MAYNARD

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

* * * * *

Came James Maynard, and appeared before the undersigned, Notary Public for the State at Large of Kentucky, and after having first been duly sworn, gave the following answers to questions written below:

1. What is your name?

ANSWER: James Maynard.

2. What is your occupation?

ANSWER: Foreman with Davis H. Elliott Company, Inc.

3. How long have you held that position?

ANSWER: I have been foreman with Davis H. Elliott Company, Inc. for eight years.

4. How long have you been in this occupation?

ANSWER: I have worked in this area since 1978, or 22 years.

5. What positions have you held since 1978 with respect to contracting work and providing electrical service?

ANSWER: I have been employed as a groundman, a lineman, and now a foreman in the construction, installation, and retiring of electrical lines.

6. What is the relationship between Davis H. Elliott Company, Inc. and Clark Energy Cooperative, Inc.?

ANSWER: Davis H. Elliott is a contractor with Clark Energy Cooperative.

7. What are the duties of Davis H. Elliott as a contractor with Clark Energy?

ANSWER: Davis H. Elliott basically has a contract with Clark Energy Cooperative to carry out certain jobs. Those jobs include constructing lines for electrical service and removing lines that are abandoned or not in use. Davis H. Elliott enters into a contract to do whatever Clark Energy needs to be done and they do the best to fulfill the terms of that contract as set out by Clark Energy.

8. Do you remember the job involving removal of an abandoned line of an area down by the river approximately two years ago?

ANSWER: Yes.

9. Please tell me what you remember about that particular job.

ANSWER: Davis H. Elliott was contacted by Clark Energy. Todd Peyton, of Clark Energy, told us there was an abandoned line that needed to be removed. Mr. Peyton stated that we need to

remove the line, cut down any poles that were left, remove all the wire from the ground, and clean up the hardware that we could get.

10. How many employees were assigned from Davis H. Elliott were assigned to that job?

ANSWER: Three employees plus myself.

11. How were you able to get to the site?

ANSWER: We were able to get to the first pole by truck. That pole set at an edge of a field and was the last pole at the edge of the field.

12. What did you observe about the abandoned line when you first arrived?

ANSWER: When we first arrived we could not see the pole where the abandoned line reportedly started. Todd Peyton, who came to the site with us had to point out the first pole.

13. How many poles were part of this abandoned line?

ANSWER: There were approximately five or six poles which led to a campsite.

14. Please describe the condition of the route by which the line traversed.

ANSWER: Starting where Todd left us at the first pole, you could not see any evidence of any right of way from that pole down to the campsite. The condition of the route was that the area was overgrown and there was no clear right of way. The crew would remove the line from one pole and then would have to hunt for the location of the next pole. There was no clear path identifying the route of the line.

15. What were the condition of the electrical poles?

ANSWER: There were, to the best of my recollection, three still standing and three poles laying on the ground. The poles that were laying on the ground still had wires attached to them that had been pulled to the ground.

16. How were you able to get to the other poles after leaving the initial pole in the field?

ANSWER: There was no way to get a vehicle down to the site so we had to walk to the remaining poles.

17. How long, approximately, did it take for you to determine the location of the next pole after finishing with the pole you were working on?

ANSWER: The crew would have to spend approximately ten to fifteen minutes to determine the location of the next pole because of the dense growth that had surrounded the area. In fact, the growth was so bad that in one area the tree had grown around the conductor approximately thirty to thirty-five feet above the ground.

18. What was the condition of the poles that were still standing and still had line attached to them?

ANSWER: The poles that were standing were not in good shape and were held up by trees.

19. What did you do to those particular poles?

ANSWER: We were told to cut down the poles that were still standing and because of the dense growth around them, we were forced to cut the poles in four foot sections, tie a rope around

the cut off section, and pull that section of the pole out so we could make additional cuts.

20. What items did you remove from the area after cutting down the remaining poles?

ANSWER: We would arrive at a pole and we would remove the wire, then we would cut the wire into sections that were small enough to roll up and carry out. Men then would pick up a section of wire and carry it back up the cliff to the truck. We removed approximately 1,000 to 1,500 feet of line which we could cut out but still left approximately 500 to 1,000 feet of line because we were unable to get it out of the trees. We removed the biggest part of the line, however. We also removed the insulators and hardware from the poles. In addition, we removed one transformer from the area. That transformer was unusable as it had been outdated and those type of transformers had been retired and replaced by Clark Energy. The poles that were cut down were left.

21. Approximately how long did it take to remove the line?

ANSWER: It took three men approximately ten hours to clean up this area. I was there about one-half of the time.

22. Upon arrival, what was the condition of the electrical wire?

ANSWER: The wire was sometimes attached to the pole, hung in the trees, and periodically there were gaps where there was no line at all. That could have been from where the line was pulled away.

23. What would have had to have been done to make that line serviceable?

ANSWER: Well, first all the poles would have had to been cut down and new poles reset. In order to reset the poles you would have had to cut out the brush using chain saws. You would have had to carry the poles in by hand and set them by hand as there was no way to get a vehicle or a machine in to assist in setting those poles. Then you would have had to determine the amount of wire you need and pull the wire by hand. The normal procedure is to have the wire pulled by machine because with that distance of line, you could not pull the line safely.

24. What was the condition of the terrain along which the line had been run?

ANSWER: The area was unlevel and contained rock cliffs and steep hills. There were places where the grade was so steep that you had to pull yourself up the cliff. In addition, the area was so overgrown that you could not walk in a straight line but would have to detour around, basically find the path of least resistance.

25. In your opinion, having worked in this industry for 22 years, what steps could have been taken to make this line serviceable?

ANSWER: There is no way you could have repaired this line to make it serviceable. In order for it to work you would have to install all new line.

26. In your opinion, having worked 22 years in this industry, was the line, as it existed, serviceable?

ANSWER: No.

27. Given the condition of the area at the time you removed the abandoned line, how would a new line be installed?

ANSWER: You couldn't have safely installed a new line given those conditions. Even if you cut the brush and right of way and cleared an area to run the new line, there was no access by vehicles and to require men to go down there to manually reset the poles and pull the line could not be done safely.

WHEREUPON, the verified statement of James Maynard was concluded.


JAMES MAYNARD

STATE OF KENTUCKY)
)
COUNTY OF CLARK)

Subscribed and sworn to before me by **JAMES MAYNARD**, on this 12th day of June, 2001.

My commission expires: April 15, 2004


NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 99-513

RECEIVED

JUN 12 2007

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

vs.

VERIFIED DIRECT TESTIMONY
OF SHANNON MESSER

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

* * * * *

Came Shannon Messer, and appeared before the undersigned, Notary Public for the State at Large of Kentucky, and after having first been duly sworn, gave the following answers to questions written below:

1. What is your name?

ANSWER: Shannon Messer.

2. What is your occupation?

ANSWER: I am the system engineer for Clark Energy Cooperative, Inc.

3. How long have you held that position?

ANSWER: I have been the system engineer for Clark Energy Cooperative for 14 years.

4. In the capacity of system engineer, what are your duties?

ANSWER: I manage the engineering group or division of Clark Energy Cooperative, Inc. That group has a number of jobs and

responsibilities including but not limited to the construction of electric lines including the installation of poles, running of conductor, and hooking up of service. That group is also responsible for removing and retiring old, damaged, or abandoned lines.

5. What is your first recollection regarding Dimitri Vaughn Taylor's request for service?

ANSWER: It was first brought to my attention that a membership had been filled out by Mr. Taylor and he wanted to determine if he could get service to his property. What struck me as strange was the fact that Mr. Taylor wanted to show the property by taking a representative of Clark Energy to the site by boat and claimed that the only access was by boat. Since it was such an unusual request, I may remember it quite clearly.

6. What was your next contact or conversation regarding Mr. Taylor's property?

ANSWER: On June 9, 1997, Todd Peyton from Clark Energy's engineering group finally met with Mr. Taylor at the site. When Mr. Peyton returned we discussed this case. The information that was provided to the engineering department was that Mr. Taylor was planning on building a road across the neighbor's property, since no access was available other than by boat, thus providing access to a campsite where he intended to build a cabin. There was to be a future meeting with Mr. Peyton and Mr. Taylor about constructing a new line to the site after a road had been built by Mr. Taylor across a neighbor's property and into the campsite area.

7. When was the next contact you had with Mr. Taylor?

ANSWER: Our records indicate that a meeting was still pending on July 2, 1997 with Mr. Taylor and his neighbors to discuss and finalize his plans for a road along their property and then to discuss with Clark Energy its plans to construct a power line along the access road. Apparently, negotiations between Mr. Taylor and his neighbor for a road access broke down after July 2, 1997 and another call was received from Mr. Taylor on September 27, 1999. During that conversation, I spoke with Mr. Taylor about the status of the road. Mr. Taylor requested Clark Energy use the poles from the abandoned power line to provide service to his campsite. I informed Mr. Taylor that Clark Energy required reasonable access to the campsite for trucks and its equipment that would be necessary for the construction, operations, and subsequent maintenance of the power line. I explained that Clark Energy would have no problem constructing the power line across the contemplated road access with suitable utility easement but that Clark Energy would not construct the road itself that Mr. Taylor could subsequently use for his access to the property.

8. What additional contact did you have with Mr. Taylor?

ANSWER: I last spoke with Mr. Taylor sometime during October of 1999. The subject of the conversation centered around the fact that there existed no access to the property other than by boat and that Clark Energy would have to have reasonable access to the campsite before it could construct the power line to the

property. During that conversation, Mr. Taylor informed me of his plans to airlift building materials for the residence or possibly airlifting a mobile home to the campsite. I also received telephone calls from Mr. Taylor's father who basically reiterated and confirmed Mr. Taylor's statements and position. I explained that the proper building permits from local planning and zoning authorities would have to be acquired as well as satisfying health department regulations before any service could be provided.

9. What were the next steps that you took with respect to Mr. Taylor's request?

ANSWER: After having these telephone conversations with Mr. Taylor and his father in October of 1999, I traveled to what appeared to be the remains of a power line constructed to Mr. Taylor's property. From my observations and Todd Peyton's report, it appeared that nature had reclaimed all of the original power line right of way except for approximately 850 feet of an old power line that was accessible by an open field. A visual inspection of the area where the line went in to Mr. Taylor's property showed no indication that an old power line existed as there were no poles or conductor readily visible from the edge of the field. In fact, there was no conductor that was attached to the poles where the line would enter into the woods.

10. What did you determine as a result of your observation of the area?

ANSWER: After looking at the area and the condition of the abandoned line and given the fact that there were no visible

signs of any existing conductor, I determined that the existing pole could not be used for electric service. Also, given the nature of the terrain and reports by Mr. Peyton of the unlevel condition of the property, I determined that there was no access available for trucks and equipment and service could not be provided until reasonable access could be provided.

11. What other decisions or determinations did you make as a result of that visit?

ANSWER: I also determined that any power line which may have existed at one time had been reclaimed by nature and that any materials, conductor, lines, poles, or other equipment which may remain in the area would represent a potential hazard to hikers and rock climbers. Because of the steep incline of the property and dense growth and wooded area, Clark Energy contracted with its contractor to, by hand, remove all remaining remnants and remains of the old line.

12. What other conversations or contact did you have with Mr. Taylor?

ANSWER: I recall no other conversation with Mr. Taylor from that point on until we received notice of his complaint with the Public Service Commission.

13. Did you later have any conversations with Mr. Rose, attorney for Clark Energy, regarding constructing an electric line extension to the property?

ANSWER: Yes. Mr. Rose was responding to a request from Patrick Nash, counsel for the complainant. I received a call from

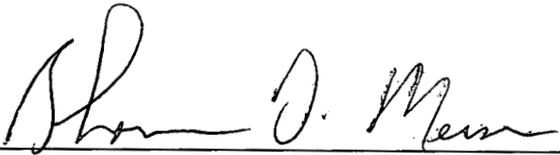
Mr. Rose requesting information regarding what it would cost to extend the electric service to Mr. Taylor's proposed residence. I determined the distance was approximately 4,125 feet but that was only an estimate pending an actual survey of a line route that would have to be determined before the line extension could be constructed. I then provided Mr. Rose with information regarding the breakdown of costs for both residences and non-residences and confirmed those in a memorandum. Subsequent to that conversation with Mr. Rose, he contacted me back and requested a more detailed explanation regarding the extension cost. I briefly described the location of Mr. Taylor's property and the adjoining property owners, and summarized the course of events that had transpired from the time Mr. Taylor first filled out the membership application to his filing of the complaint with the Public Service Commission. I discussed the estimated distance to Mr. Taylor's proposed residence and set out the line extension cost. In that conversation, I explained to Mr. Rose that no road construction costs would be included nor did it include any condemnation costs that may be required in the event it was necessary to procure easements.

14. Why is it your position that reasonable access is necessary before Clark Energy can construct and install a line extension to service Mr. Taylor's property?

ANSWER: Clark Energy requires reasonable access which we define as the ability to transport and position personnel, materials, and equipment including the various trucks needed to

construct, operate, and maintain a power line before a line extension will be constructed. Another reason is to provide access to the service for meter reading. One of the reasons for that is that Clark Energy cannot unnecessarily expose its employees to hazardous conditions or have them engage in conduct which would put them in an unsafe environment. Reasonable access allows for Clark Energy to safely and routinely construct and maintain the operations of a power line. The Public Service Commission's own regulations allow a utility to refuse service when a customer refuses or neglects to provide access to their premises for the installation, operation, and maintenance of utility facilities and meter reading. Boat access alone or access only by foot across a neighbor's property is not, in Clark Energy's opinion, reasonable access.

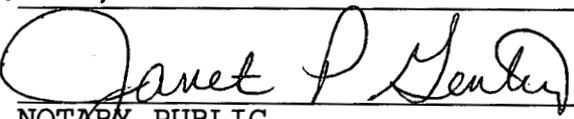
WHEREUPON, the verified direct testimony of Shannon Messer was concluded.


SHANNON MESSER

STATE OF KENTUCKY)
COUNTY OF CLARK)

Subscribed and sworn to before me by SHANNON MESSER, on this 12th day of June, 2001.

My Commission expires: 7-18-02


NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 99-513

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JUN 12 2001

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

vs.

VERIFIED DIRECT TESTIMONY
OF TODD PEYTON

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

* * * * *

Came Todd Peyton, and appeared before the undersigned, Notary Public for the State At Large of Kentucky, and having first been duly sworn, gave the following answers to questions written below:

1. What is your name?

ANSWER: Todd Peyton.

2. What is your occupation?

ANSWER: Lead engineering technician with Clark Energy Cooperative, Inc.

3. How long have you held that position?

ANSWER: I have held that position for the last one and one-half years.

4. Prior to being lead engineering technician, what was your position with Clark Energy?

ANSWER: I was an engineering technician for 12 years prior to being named as lead engineering technician.

5. In your capacity as lead engineering technician, what are your duties?

ANSWER: As lead engineering technician, I am responsible for the supervision of a contracted construction crew that Clark Energy Cooperative, Inc. retains to perform line construction, maintenance, and retirement of lines. Part of my duties include the construction of new lines, maintenance of existing lines, and supervision of the retirement of abandoned or old lines.

6. When did you first become aware of Dimitri Vaughn Taylor's request?

ANSWER: There was an official request and membership application filled out by Taylor. It apparently was taken over the phone and it appears he came in the same day and filled out the membership application.

7. What did you do in response to the application?

ANSWER: As a result of the application being filled out, the standard procedure is that an appointment is made by field engineering personnel to review the site to determine what is necessary to provide electricity to the requested site and if said site is in an area where Clark Energy can gain access to the property. In this particular instance, the arrangements were originally set up to meet Mr. Taylor at the Boonesboro Boat Dock and I was advised that we would be traveling to the location by boat, the only access. The meeting site subsequently changed and we met not at the boat dock but at Judy Ray's store.

8. What happened when you arrived at the store and first met with Mr. Taylor?

ANSWER: When I arrived, we exchanged greetings and then Mr. Taylor got in my truck and we drove to the nearest land access which happened to be the property of Mitchell Sidwell. Mr. Sidwell's property is located at the end of Sidwell Lane in Clark County. When we arrived, Sidwell was feeding livestock.

9. What did you do next?

ANSWER: We pulled up, both of us got out, and Mr. Taylor approached Mr. Sidwell and asked Mr. Sidwell if we could drive through his field to get closer to the campsite before having to park the truck and walk over the bluff down to the river. Mr. Sidwell responded that he would rather not because the fields were wet and was concerned about the effect that driving the truck over the land would have on the fields.

10. Did you go to Mr. Taylor's site on that day?

ANSWER: No.

11. What did you do then?

ANSWER: Mr. Taylor and myself discussed what was going to happen and Mr. Taylor expressed that it was his intent to build a road to the site, however, he had not worked out the specific routing. At that time, Mr. Taylor acknowledged that the line was not in good shape and in fact admitted that he knew several poles were down.

12. Was that a common understanding in the area concerning the condition of the line?

ANSWER: It is my understanding that both the landowners, Mr. Sidwell and his neighbor, were aware that the line had been abandoned many years ago and that there was no service to that area.

13. What was your impression after meeting with Mr. Taylor?

ANSWER: When I left, Mr. Taylor knew that he needed to start construction on the site before service could be hooked up. He also knew that prior to any service being connected, he had to provide reasonable access to the campsite for Clark Energy. In fact, Mr. Taylor stated he was in negotiations with Mr. Sidwell to acquire an access easement across Mr. Sidwell's property to the campsite. When we left, a future meeting was contemplated so that Clark Energy could check on the progress made by Mr. Taylor to determine if the easement was given by Mr. Sidwell and if reasonable access could be provided to the site.

14. How many additional times did you meet with Mr. Taylor?

ANSWER: I only met with Mr. Taylor that one time.

15. When was the next time that you visited the site?

ANSWER: The next time I visited was in October of 1999.

16. What was your reason for going to the area on the second occasion?

ANSWER: I was instructed by Shannon Messer, my supervisor, to go look at the line and generally assess its condition. I ended up going with Mr. Messer to the site and we

gained access through the neighbor's property. We traveled to a point where the Clark Energy line ended and where the old, abandoned, unserviceable line originated. The area where we initially stopped was where the last pole with available power provided electric service to a customer. That same pole was the same point where a primary conductor had been disconnected and which, at one time, led to the abandoned line to the campsite. From that pole, the conductor ran approximately 850 feet to another pole at the edge of the customer's field. From that pole, there was no line continuing into the trees and down to Mr. Taylor's campsite.

17. What did you do after observing this line across the field?

ANSWER: I then climbed over the fence and went into the wooded area. I looked into the wooded growth but could not initially see any evidence of any line. After searching a few minutes, I found two broken poles on the ground and a third broken pole that was badly leaning.

18. Did you have any information concerning notice of any other poles in the area?

ANSWER: I looked at the service map which showed no indication of any poles or any line continuing from where our last customer was being serviced.

19. What decisions were made at that time?

ANSWER: At that time, the decision was made to retire any remaining remnants of the old line.

20. Why was this decision made?

ANSWER: The line appeared to stop at the last customer's structure. There was approximately 850 feet of conductor that went to a pole at the edge of the customer's field but from that point on there was no overhead line. There was also no evidence of any right of way easement or clearing from that point on. After you cross the fence at the edge of this field, you start descending with the bluff leading down to the river.

21. What did you do next?

ANSWER: After returning from the site, I contacted Davis H. Elliott, a contractor for Clark Energy Cooperative, and advised them we needed assistance in retiring an abandoned line.

22. What did you do after contacting Davis H. Elliott?

ANSWER: I met a Davis H. Elliott crew and took them to the site. I showed the Davis H. Elliott crew, who was being supervised by James Maynard, the area that needed to be retired and showed them the pole as it led into the woods and down the bluff. I then left Davis H. Elliott to complete the work we requested.

23. Did you visit the site on any other occasion?

ANSWER: Yes. I visited the site to inspect and verify that the crew had completed its work and to take digital photographs of the area in response to a complaint filed by Mr. Taylor to the Kentucky Division of Water.

24. What did you observe on this visit?

ANSWER: There was still conductor tangled in the trees and interwoven in the branches of the growth and the line was still

in the air. There were no other obvious means of support for the line other than the tree limbs.

WHEREUPON, the verified direct testimony of Todd Peyton was concluded.

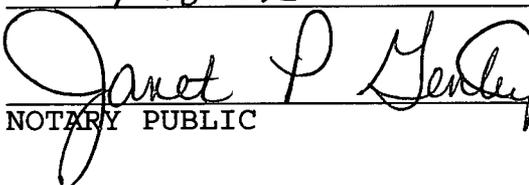


TODD PEYTON

STATE OF KENTUCKY)
) SS
COUNTY OF CLARK)

Subscribed and sworn before me by **TODD PEYTON**, on this
12 day of June, 2001.

My Commission expires: 7-18-02



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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

COMPLAINANT'S ANSWERS TO
DEFENDANT'S INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

Comes the complainant Dimitri Vaughn Taylor and for his answers to defendant's interrogatories and request for production of documents states as follows:

INTERROGATORIES

1. Identify all individuals, including names and addresses, other than Mr. Taylor who observed the poles were in good repair complete with electrical wires and all other equipment necessary for electrical service prior to Mr. Taylor formally applying for electrical service.

ANSWER: Other than Mr. Taylor himself, Mr. Taylor is aware of at least two individuals who observed the wires and poles prior to the time that Mr. Taylor formally applied for electrical services. These two individuals would be John D. Walker of Inez, Kentucky and Steve Slonaker, 875 Beach Road, Lexington, Kentucky, whose testimony has been filed of record.

2. Please identify, by name, the representative of Clark Energy Cooperative, Inc. who Mr. Taylor and his wife, Ann Taylor, spoke with in their March, 1997 visit to Clark Energy

Cooperative in Winchester, Kentucky and the substance of the conversation.

ANSWER: Ann Taylor did not speak with any of the representatives on this occasion. Vaughn Taylor does not know the names of the individuals that he spoke with on this occasion, however descriptions of these individuals are provided in his testimony filed of record. The substance of that conversation is described in the testimony filed of record.

3. Please identify, by name, the representative of Clark Energy Cooperative, Inc., who informed Mr. Taylor that providing electrical service to the home site would be “no problem” and a summary of the conversation.

ANSWER: The individuals who made this statement, as best as they can be identified, are described in Mr. Taylor’s testimony filed of record as is the substance of this conversation.

4. Please state why the complainant did not immediately apply for electrical service, if, in fact, the poles, lines, and electrical wires were in good condition.

ANSWER: Mr. Taylor did immediately apply for electrical services, just days after taking a deed to the property. Additionally, Mr. Taylor inquired about electrical service and received assurances that such services would be provided long before even obtaining a deed to the property.

5. Please identify, by name, the individual or individuals (identified by Mr. Taylor as Clark Energy cooperative representatives) who Mr. Taylor spoke with on May 28, 1997 and the substance of the conversation.

ANSWER: These individuals, as best as they can be described, are described in Mr. Taylor’s sworn testimony filed of record as is the substance of this conversations.

6. Please identify, by name, the Clark Energy Cooperative, Inc. representative who allegedly drew Mr. Taylor a diagram of the equipment he needed to purchase for temporary

electrical service.

ANSWER: See answer to number 5.

7. Please identify, by name, address, and telephone number, all adjoining property owners and identify which of the adjoining property owners has ever granted Mr. Taylor an access agreement or utility easement to or for the benefit of Mr. Taylor for the installation of electrical poles by Clark Energy cooperative, Inc.

ANSWER: To the best of Mr. Taylor's knowledge, the adjoining property owners are: (1) Mitchell Sidwell, 995 Sidwell Lane, Lexington, Kentucky 40509; (2) Pat Shelly, street address unknown, Lexington, Kentucky 40509; (3) Michael Hanley, Munchs Corner Lane, Lexington, Kentucky 40509. None of these adjoining property owners have ever formally (that is by written instrument) granted Mr. Taylor an access agreement or utility easement to or for the benefit of Mr. Taylor for the installation of electrical poles by Clark Energy Cooperative, Inc. However, Clark Energy Cooperative's "Application for Membership and/or for Electrical Services" requires any person receiving electrical service (including, presumably, Mr. Taylor's neighbors) to provide to Clark RECC "a perpetual easement and right and privilege of free access, over, across and through the land and premises of the undersigned/applicant to erect, construct, install, place, locate and build, and thereafter use, operate, inspect, repair, maintain, service, replace and move its electrical distribution system, new or existing lines of any type, wires, poles, anchors, or other appurtenant parts thereof".

8. Please identify, by name, address, and telephone number, all adjoining property owners who have ever given Mr. Taylor permission, either oral or written, to cross their property to gain access to his property.

ANSWER: Informal oral agreements exists and/or have existed between Mr. Taylor and Mitchell Sidwell, Michael Hanley and Pat Shelly.

9. Please state whether Mr. Taylor has ever discussed with or requested from the adjoining property owners plans for acquiring an easement to build a road to gain access to his riverfront property.

ANSWER: Mr. Taylor has never discussed building a road with any of the adjoining property owners.

10. Please identify, by name, Clark Energy Cooperative, Inc. representatives who Mr. Taylor spoke to in June, 1997, and who Mr. Taylor states informed Mr. Taylor he must obtain various permits before electrical service could be supplied and the nature and substance of the conversation.

ANSWER: See answer to number 5.

11. Please identify, by name, the representative of Clark Energy Cooperative, Inc. who Mr. Taylor called and who allegedly informed Mr. Taylor that Clark Energy did "in fact destroy and remove the electrical equipment because they plan to run electricity to his home site from a different direction"?

ANSWER: See answer to number 5.

12. Please identify, by name, the representative of Clark Energy Cooperative, Inc., who has reportedly asserted that Clark Energy Cooperative, Inc. possessed a right of way, access agreement, or utility easement to Mr. Taylor's property.

ANSWER: See answer to number 5. Additionally, such right-of-way, access, and utility easement is provided for in Clark RECC's "Application for Membership and/or for Electrical Services" which is attache as Exhibit A to Mr. Taylor's "Statement and Memorandum

as Required by Order Dated 3/28/01". In addition, a right-of-way is indicated and described as "ok" in Clark RECC's paperwork attached as Exhibit C to that same document.

13. Please describe, in detail, how Mr. Taylor accesses the subject property.

ANSWER: Mr. Taylor most routinely accesses property by boat via the Kentucky River. Sometimes, Mr. Taylor gains access to his property over land. When access is gained over land, Mr. Taylor drives to Sidwell Lane and parks his vehicle. He then crosses over the property of certain adjacent land owners as described above.

14. Please describe, in detail, by which rout Mr. Taylor proposes Clark Energy's trucks, needed for initial power line construction, subsequent operation and maintenance, and meter reading will have access to the subject property. In describing the route Clark Energy is to follow, please provide directions and distances.

ANSWER: Mr. Taylor denies that truck access is necessary for electrical service since such service was apparently provided in the past. Mr. Taylor is not involved in the business of providing electrical services and thus is not qualified to dictate which route is the best for Clark RECC to provide electrical service. Based on his observations, however, Mr. Taylor believes that electrical service could easily be provided over the formerly existing path traveled by Clark RECC's power lines and poles. There is in existence an old road approximately parallel to the path where the poles and wires formerly existed. By Mr. Taylor's observation, this road, with a relatively minimal amount of clearing work, could be reclaimed and reused and provide truck access.

15. Please describe the condition of the original alleged right of way when Mr. Taylor purchased the property.

ANSWER: Please see all sworn testimonies of Mr. Taylor and his witnesses that have been filed of record.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Provide an original reproduction of the photographs taken by or on behalf of Mr. Taylor which show the utility poles and tags which were located on the electrical poles which Mr. Taylor alleges were previously used for electrical service to the property.

RESPONSE: These photos are attached as exhibits to the sworn testimonies filed of record.

2. Please provide any written agreements between Mr. Taylor and any of his adjoining property owners which evidence an access agreement or easement which would permit Clark Energy to construct and install utility poles to the property.

RESPONSE: No such written agreements have been entered into by Mr. Taylor, however, Clark RECC's "Application for Membership and/or for Electrical Services" provides such access and easement.

3. Please provide all photographs taken by Mr. Taylor regarding the condition of the site and power lines allegedly abandoned in place by Clark Energy many years ago and indicate the date on which said photographs were taken.

RESPONSE: Mr. Taylor denies any abandonment. All photographs have been attached to the sworn testimonies filed of record and/or otherwise filed of record. In regards to when and how these photographs were taken, please refer to the sworn testimonies filed of record.

CERTIFICATE OF SERVICE

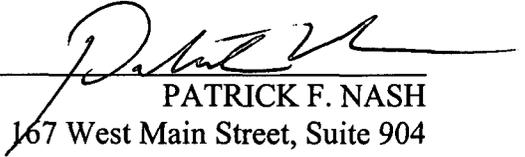
I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 12 day of June, 2001 to:

Hon. Robert Rose
GRANT ROSE & PUMPHREY
51 South Main Street
Winchester, KY 40391
ATTORNEY FOR DEFENDANT



PATRICK F. NASH

Respectfully submitted,


PATRICK F. NASH

167 West Main Street, Suite 904
Lexington, Kentucky 40507
(859) 254-3232

ATTORNEY FOR COMPLAINANT

VERIFICATION

I have read the foregoing responses and the answers it contains are true and correct to the best of my knowledge and belief.

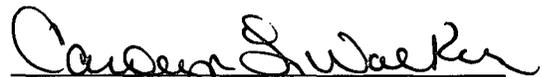

DIMITRI VAUGHN TAYLOR

STATE OF KENTUCKY

COUNTY OF FAYETTE

The above Answers to Defendant's Interrogatories and Request for Production for Documents was subscribed, sworn to and acknowledged before me, the undersigned authority by Dimitri Vaughn Taylor on this the 12th day of June, 2001.

My Commission Expires: 8/26/03.


NOTARY PUBLIC
State-at-Large, Kentucky

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 12 2001

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

NOTICE OF FILING

Comes the complainant, Dimitri Vaughn Taylor, and files herewith the direct testimony of his witnesses which are: Dimitri Vaughn Taylor; Cheri Kirkwood, Grover Taylor, Steven Slonaker, Donald Brent Myers, and Roger Tuttle. These direct testimonies are filed with exhibits attached.

Respectfully submitted,


PATRICK F. NASH
167 West Main Street, Suite 904
Lexington, Kentucky 40507
(859) 254-3232

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 12 day of June, 2001 to:

Hon. Robert L. Rose
Hon. Brian N. Thomas
GRANT ROSE & PUMPHREY
51 South Main Street
Winchester, KY 40391
ATTORNEYS FOR DEFENDANT


PATRICK F. NASH



COOPERATIVE

A Touchstone Energy™ Partner 

May 29, 2001

Mr. Thomas M. Dorman
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED

MAY 29 2001

PUBLIC SERVICE
COMMISSION

Dear Mr. Dorman,

Clark Energy wishes to file an original and eight (8) copies of the defendant's interrogatories and request for production of documents to the complainant in the matter of Dimitri Vaughn Taylor vs. Clark Energy Cooperative, Inc., Case No. 1999-513.

Please contact me should you have any questions or need additional information.

Respectfully,

A handwritten signature in black ink, appearing to read "Shannon D. Messer".

Shannon D. Messer
System Engineer

Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 99-513

RECEIVED

MAY 29 2001

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

vs.

DEFENDANT'S INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

* * * * *

Comes now the defendant, Clark Energy Cooperative, Inc., by and through counsel, and pursuant to the Order of the Public Service Commission dated May 15, 2001, respectfully submits the following submits the following Interrogatories and Request for Production of Documents. These discovery requests are to be answered within ten (10) days of service pursuant to the Commission's Order.

INTERROGATORIES

1. Identify all individuals, including names and addresses, other than Mr. Taylor who observed the poles were in good repair complete with electrical wires and all other equipment necessary for electrical service prior to Mr. Taylor formally applying for electrical service.

2. Please identify, by name, the representative of Clark Energy Cooperative, Inc. who Mr. Taylor and his wife, Ann Taylor, spoke with in their March, 1997 visit to Clark Energy

Cooperative in Winchester, Kentucky and the substance of the conversation.

3. Please identify, by name, the representative of Clark Energy Cooperative, Inc., who informed Mr. Taylor that providing electrical service to the home site would be "no problem" and a summary of the conversation.

4. Please state why the complainant did not immediately apply for electrical service if, in fact, the poles, lines, and electrical wires were in good condition.

5. Please identify, by name, the individual or individuals (identified by Mr. Taylor as Clark Energy Cooperative representatives) who Mr. Taylor spoke with on May 28, 1997 and the substance of the conversation.

6. Please identify, by name, the Clark Energy Cooperative, Inc. representative who allegedly drew Mr. Taylor a diagram of the equipment he needed to purchase for temporary electrical service.

7. Please identify, by name, address, and telephone number, all adjoining property owners and identify which of the adjoining property owners has ever granted Mr. Taylor an access agreement or utility easement to or for the benefit of Mr. Taylor for the installation of electrical poles by Clark Energy Cooperative, Inc.

8. Please identify, by name, address, and telephone number, all adjoining property owners who have ever given Mr.

Taylor permission, either oral or written, to cross their property to gain access to his property.

9. Please state whether Mr. Taylor has ever discussed with or requested from the adjoining property owners plans for acquiring an easement to build a road to gain access to his riverfront property.

10. Please identify, by name, Clark Energy Cooperative, Inc. representatives who Mr. Taylor spoke to in June, 1997, and who Mr. Taylor states informed Mr. Taylor he must obtain various permits before electrical service could be supplied and the nature and substance of the conversation.

11. Please identify, by name, the representative of Clark Energy Cooperative, Inc. who Mr. Taylor called and who allegedly informed Mr. Taylor that Clark Energy did "in fact destroy and remove the electrical equipment because they plan to run electricity to his home site from a different direction"?

12. Please identify, by name, the representative of Clark Energy Cooperative, Inc., who has reportedly asserted that Clark Energy Cooperative, Inc., possessed a right of way, access agreement, or utility easement to Mr. Taylor's property.

13. Please describe, in detail, how Mr. Taylor accesses the subject property.

14. Please describe, in detail, by which route Mr. Taylor proposes that Clark Energy's trucks, needed for initial power line construction, subsequent operation and maintenance, and meter reading will have access to the subject property. In

describing the route Clark Energy is to follow, please provide directions and distances.

15. Please describe the condition of the original alleged right of way when Mr. Taylor purchased the property.

REQUEST FOR PRODUCTION OF DOCUMENTS

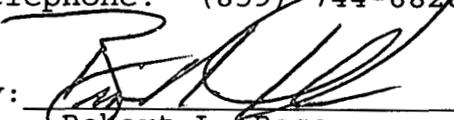
1. Provide an original reproduction of the photographs taken by or on behalf of Mr. Taylor which show the utility poles and tags which were located on the electrical poles which Mr. Taylor alleges were previously used for electrical service to the property.

2. Please provide any written agreements between Mr. Taylor and any of his adjoining property owners which evidence an access agreement or easement which would permit Clark Energy to construct and install utility poles to the property.

3. Please provide all photographs taken by Mr. Taylor regarding the condition of the site and power lines allegedly abandoned in place by Clark Energy many years ago and indicate the date on which said photographs were taken.

Respectfully submitted,

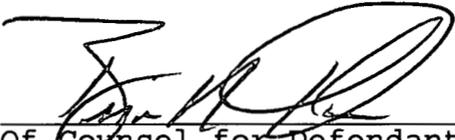
GRANT, ROSE & PUMPHREY
51 South Main Street
Winchester, Kentucky 40391
Telephone: (859) 744-6828

By: 
Robert L. Rose
Brian N. Thomas

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that the foregoing Defendant's Interrogatories and Request for Production of Documents has been served by mailing a true and correct copy of same to Patrick F. Nash, 112 North Upper Street, Lexington, Kentucky 40507, on this 29th day of May, 2001.



Of Counsel for Defendant



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

May 15, 2001

To: All parties of record

RE: Case No. 1999-513

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

A handwritten signature in black ink that reads "Stephanie J. Bell".

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P. O. Box 748
2640 Ironworks Road
Winchester, KY 40392 0748

Dimitri Vaughn Taylor
P. O. Box 4242
1220 Enterprise Drive
Winchester, KY 40391

Honorable Patrick F. Nash
Counsel for Dimitri Taylor
112 North Upper Street
Lexington, KY 40507

Honorable Robert L. Rose
Attorney for Clark Energy
Grant, Rose & Pumphrey
51 South Main Street
Winchester, KY 40391

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-513
)	
CLARK ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

O R D E R

On March 28, 2001, the Commission issued an Order in this matter ordering that, if no answer from Complainant were received within 30 days of issuance of said Order, the matter would be dismissed. Within 30 days of issuance of the Order, Complainant responded. Upon the motion of Complainant and good cause having been shown, the Commission finds that a new procedural Order should be entered in this case.

IT IS THEREFORE ORDERED that:

1. A formal hearing in this matter is scheduled for June 26, 2001 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, and shall continue until completed.
2. On or before May 29, 2001, each party may serve upon any other party additional requests for production of documents and written interrogatories to be answered by the party served within 10 days of service.

3. On or before June 12, 2001, each party shall file with the Commission in verified form additional direct testimony of any witness that it expects to call at the formal hearing.

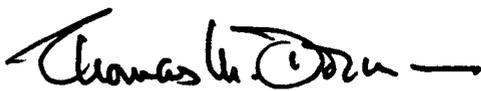
4. On or before June 19, 2001, each party shall file with the Commission in verified form testimony of any rebuttal witness that it expects to call at the formal hearing.

5. All provisions of previous Commission Orders that do not conflict with this Order remain in effect.

Done at Frankfort, Kentucky, this 15th day of May, 2001.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas H. Dorn", written over a horizontal line.

Executive Director

PATRICK F. NASH

ATTORNEY-AT-LAW

167 WEST MAIN STREET, SUITE 904
LEXINGTON, KENTUCKY 40507

(859) 254-3232
FAX: (859) 225-4746

RECEIVED

APR 30 2001

PUBLIC SERVICE
COMMISSION

April 27, 2001

Kentucky Public Service Commission
211 Sower Blvd.
P O Box 615
Frankfort, KY 40602

RE: Taylor v. Clark Energy Cooperative

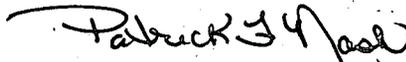
99-513

Dear Sir or Madam:

Pursuant to my telephone conversation with your office today, please find an original and 10 copies of our Statement and Memorandum As Required by Order Dated 3/28/01.

If you have any questions or need anything additional, please call my office.

Sincerely,


Patrick F. Nash *myclw*

PFN/clw

Enclosures

✓

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 30 2001

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

STATEMENT AND MEMORANDUM
AS REQUIRED BY ORDER DATED 3/28/01

Comes the complainant, Dimitri Vaughn Taylor, by counsel, and submits the following as his statement and brief as to why this matter should not be dismissed for failure to prosecute, and why he will prevail at a hearing on the merits.

I. STATEMENT OF FACTS

The following is a summary of the facts of this case that will be presented to this Commission via the sworn testimony of Dimitri Vaughn Taylor and/or other witnesses and/or through the presentation of documents, several of which have been attached to this pleading as exhibits.

In the winter 1996-1997, Dimitri Vaughn Taylor (hereafter "Mr. Taylor") became aware of property on the Kentucky River that was for sale. This property once contained a residence and, at the time that Mr. Taylor was looking at it, the foundation, chimney, fireplace, and portions of the structure of that residence still remained. There was no road access to this property or to the home site. There was, however, access by foot and access via the Kentucky River. Also, utility poles and wires ran from the home site to a neighbor's property with road frontage and road access. Mr. Taylor and other witnesses observed that the poles were in good

repair, complete with electrical wires, and all of the other equipment necessary for electrical service. Contrary to the claims of Clark Energy Cooperative, Inc. (hereafter "Clark RECC") Mr. Taylor and other witnesses observed no poles down or equipment hanging in trees. Clark RECC claims in responses to interrogatories that electrical service was provided to the home site up until the late '60's, however, Mr. Taylor observed and photographed tags on the electrical poles dated in the 1980's.¹ Mr. Taylor was interested in purchasing this property for the purpose of building a home at the home site. The property was being offered for sale for \$6,000.

In March 1997, approximately two months prior to purchasing the property, Mr. Taylor met with representatives of Clark RECC at its offices in Winchester, Kentucky. On this occasion, Mr. Taylor traveled to the Clark RECC office with his wife Ann Taylor, who can confirm this visit. He spoke with Clark RECC representatives and described the property that he hoped to purchase, and specifically described that the property was landlocked with no road access. Mr. Taylor accurately described the condition of the poles, wires, transformers, etc. that ran to the home site. Mr. Taylor was advised, in definite terms, that providing electrical service to the home site would be "no problem" so long as Mr. Taylor "got a deed" to the property. Based on this unequivocal promise by Clark RECC, Mr. Taylor decided to purchase the property. The whole purpose of Mr. Taylor's March 1997 visit to Clark RECC was to determine before deciding to purchase the property if electrical service was available.

In May 1997, Mr. Taylor closed on the property at issue, and took a deed to that property. Shortly thereafter, on May 28, 1997, Mr. Taylor returned to the Clark RECC offices with his deed as instructed. On this day, Mr. Taylor signed the Clark RECC Application for Membership

¹ In response to interrogatories, Clark RECC admits to removing these tags and destroying them without recording or photocopying the information on the tags.

and/or Electrical Service (attached as Exhibit A). Again he talked with Clark RECC representatives and was informed that in order to receive temporary electricity to begin building his home, he must purchase and set up equipment to which Clark RECC could hook up the temporary electrical service. Clark RECC representatives then drew Mr. Taylor a diagram of the equipment that he needed to purchase (attached as Exhibit B).² At the conclusion of this meeting, Clark RECC's position with Mr. Taylor remained consistent; they would hook electrical service up at the home site with the only prerequisites being Mr. Taylor's agreement to purchase electricity from them and to purchase and set up the equipment drawn in the diagram attached as Exhibit B. In its pleadings, Clark RECC admits that it informed Mr. Taylor on this date that electrical service "should be available" for the property that he had just purchased.

In June 1997, Mr. Taylor met near the home site with Clark RECC representative Todd Peyton. On this occasion, the gate to the land owned by Mr. Taylor's neighbor was locked, and the neighbor was not home. Thus, Mr. Taylor and Mr. Peyton were unable to gain access to Mr. Taylor's property. Clark RECC alleges that Mr. Peyton conducted an extensive investigation on this occasion and determined that existing poles and equipment had been reclaimed by nature and that several of the poles and lines were down. In fact, Mr. Peyton made none of these observations on this occasion. Clark RECC alleges that on this date, Mr. Peyton told Mr. Taylor that he had to build a road to get electrical service. Mr. Taylor told Mr. Peyton that he hoped to

² In discovery, Clark RECC has denied that any of its representatives drew this diagram. However, as can be seen from the exhibit, the diagram was drawn on the back of a Clark RECC form. Additionally, in discovery, Clark RECC claims that the May 28, 1997 meeting did not occur in person but occurred over the telephone. Again, Clark RECC's position regarding this meeting is contradicted by the fact that Mr. Taylor's signature appears on the Clark RECC form dated 5/28/97, which would be impossible had the meeting occurred over the telephone as Clark RECC would have this Commission believe.

build a road to the home site. However, this was the extent of the discussion and Mr. Peyton never gave any indication that a road was a prerequisite to electrical service. Clark RECC paperwork generated in June 1997 contradicts its assertions and shows that, as of this date, Mr. Taylor was considered to be a member of Clark RECC; that the right-of-way easement for electrical service to his land was "ok"; and that the plan was to provide temporary service to the home site via existing poles and wires. (See Exhibit C).

Mr. Peyton talked about coming back in the future but Mr. Taylor is unsure whether Mr. Peyton or any other Clark RECC representatives returned to his property in June 1997. However, later in June 1997, Mr. Taylor called Clark RECC to discuss the timing of the installation of temporary electrical service and was informed, for the first time, that before temporary service could be installed, he must obtain a building permit, and get the appropriate permits and clearances for his sewage/septic systems. Mr. Taylor was informed that after these permits were obtained, temporary electrical services would be provided.

Mr. Taylor began to take steps to obtain the requested permits (see Exhibit D). However, he quickly realized that in order to obtain these permits he would have to expend significant financial resources which, at the time, he did not have. It took some time for Mr. Taylor to gather the resources and proceed with the process of obtaining the necessary permits.

By 1999, Mr. Taylor was prepared to purchase all necessary septic and sewer systems and had further completed all steps necessary to obtain his building permit. Mr. Taylor then called Clark RECC to inform them that he was on the verge of obtaining all necessary permits (See Exhibit C). In the pleadings, Clark RECC claims that about this same time its representative, Mr. Messer became "curious" about Mr. Taylor's property and visited it of his own accord to satisfy his curiosity. It is Mr. Taylor's belief that his phone call to Clark RECC is

what triggered this sudden "curiosity" in Mr. Messer. Almost immediately after the phone call and Mr. Messer's visit to the home site, Clark RECC hired a crew to enter onto Mr. Taylor's property, cut down the existing utility poles, and collect the wires, transformers, and tags from those poles. The poles themselves were simply left laying on Mr. Taylor's property. Mr. Taylor was unaware that this was happening until after Clark RECC had completed the destruction of the electrical equipment. Mr. Taylor photographed the poles that were cut down to show that the poles were in good shape, and not rotten or otherwise deteriorated.

When Mr. Taylor discovered what had happened, he called Clark RECC to ask them if they had cut down the poles and removed the equipment. A representative denied that Clark RECC had any involvement in this activity. Approximately one week later, Mr. Taylor called Clark RECC again and was informed that Clark RECC did in fact destroy and remove the electrical equipment because they planned to run electricity to his home site from a different direction. Shortly thereafter, Mr. Messer called Mr. Taylor and explained that the line to Mr. Taylor's home site had been "retired." At this point, it was explained to Mr. Taylor for the first time that Clark RECC would not provide electrical service unless he built a road to the home site.

In subsequent pleadings, Clark RECC has made clear its position that it will not provide electrical service to Mr. Taylor unless it has truck access via a road to the home site. However, in Clark RECC's responses to Mr. Taylor's discovery requests, it refused to answer questions as to why truck access was necessary and when truck access became a prerequisite for electrical services (electricity was provided to the previous home site without truck access). Clark RECC has also made clear its position that electrical service could not have been provided via the existing poles and equipment. However, Clark RECC refused to answer questions in discovery

as to whether electricity was provided to any other customers with poles, lines and transformers of the same vintage as those that it cut down and removed from Mr. Taylor's property.

Despite the fact that truck access is allegedly necessary before Clark RECC can service the lines to Mr. Taylor's home site, its crew was able to obtain adequate access to cut down and remove much of the electrical equipment. By its own admissions in discovery, Clark RECC crews obtained adequate access to Mr. Taylor's property at least two other times, once on January 12, 2000 to remove additional equipment and once after January 13, 2000 to take pictures of Mr. Taylor's property.

At the time all of this occurred, Mr. Taylor was bewildered as to why he would be treated this way by Clark RECC. What possible motive would Clark RECC have in promising him electrical service if he would purchase the land, and then deny him service after the purchase? Why would they cut down and remove all the electrical equipment from his property when he was on the verge of complying with their stated prerequisites for obtaining service? The answers to these questions became clear after Mr. Taylor filed his complaint with this Commission.

In July 2000, Clark RECC offered to provide electrical service to Mr. Taylor if he paid them between \$17,781.25 and \$22,485.25. (See Exhibit E). This charge was necessary because, according to Clark RECC, they had to run 4,125 feet of electrical wire across a "new route." Clark RECC had previously estimated that electrical service along the old route would have required approximately 100 feet of electrical wire (See Exhibit C). Additionally, Clark RECC demanded that Mr. Taylor pay unspecified condemnation costs associated with this construction project. This demand was made despite the fact that in its pleadings and discovery responses Clark RECC repeatedly asserted that it possessed a right-of-way to Mr. Taylor's home site. Exhibit C confirms the right-of-way is "ok." Additionally, Clark RECC's application for

membership (Exhibit A) sets forth in paragraph 4 its right-of-way across any lands necessary to install electrical service. All of these costs are in addition to Clark RECC's demand that Mr. Taylor construct, at his own cost, a road to the home site.

Mr. Taylor cannot afford to pay Clark RECC the type of money that it is now demanding, nor should he have to, given the binding promises that Clark RECC made to him prior to his purchase of the property.

II. ARGUMENT

Through the facts and circumstances described above, Clark RECC and Mr. Taylor entered into a valid and binding contract for the provision of electricity to the home site. At the most basic level, a binding contract is created "...where a party makes an offer and another acts upon it..." *Messick v. Powell*, Ky., 236 S.W.2d 897, 899-900 (1951); *Cali-Ken Petroleum Co., Inc. v. Miller*, 815 F. Supp. 216, 217 (W.D. Ky. 1993). Clark RECC offered electrical service to Mr. Taylor if he could get a deed to the property. He acted upon this promise and obtained the deed. Under this circumstance "...the party making the offer is bound to perform his promise." *Messick*, 236 S.W.2d at 899-900.

The binding nature of the agreement between Clark RECC and Mr. Taylor is not defeated by the fact that the parties had not formally reduced their agreement to writing. Oral agreements that satisfy all contractual prerequisites are enforceable. *Buttorff v. United Electronic Laboratories, Inc.*, 459 S.W.2d 581, 584 (1970); *Skaggs v. Wood Mosaic Corp.*, Ky., 428 S.W.2d 617, 619 (1968); *Dohrman v. Sullivan*, Ky., 220 S.W.2d 973, 976 (1949).³ In fact, Clark RECC's "Rules and Regulations" (produced in discovery) specifically contemplate that Clark

³ The parties did, however, put portions of their agreement in writing as evidenced by Exhibits A, B, and C.

RECC will be bound by promises it makes that are not in writing: "this schedule of rules and regulations...applies to all service received from the cooperative whether the service received is based upon a contract, agreement, signed application, or otherwise." Rules and Regulations of Clark EC, I. SCOPE.

The acts that each party engaged in, offer further evidence of the binding contract that was created. Those acts include: Mr. Taylor's purchase of the property, the drawing by Clark RECC of the prerequisites for temporary electric hookup, Clark RECC's visit to the property in June 1997, Clark RECC's creation of Exhibit C and Mr. Taylor's efforts to obtain all necessary permits. A binding contract may be inferred from the circumstances, conduct, acts, or relationships between the parties. *Cheatham's Ex'r v. Parr*, Ky., 214 S.W.2d 95, 97 (1948); *Victor's Executor v. Monson*, Ky., 283 S.W.2d 175, 177 (1955); see also *Perkins v. Daugherty*, Ky. App., 722 S.W.2d 907, 909 (1987).

The evidence will show that all of the prerequisites for a binding contract exist in this case. Generally, the four prerequisites are: (1) the parties must possess the capacity to contract (i.e., they are adults and not under any legal or mental disability); (2) the parties must manifest their intent to be bound by the terms of the agreement; (3) the contract must have a legal objective; and, (4) there must be valid and sufficient consideration passing between the parties. William S. Haynes, *Kentucky Jurisprudence*, Contracts, § 1-1 (1986); *Kovachs v. Freeman*, Ky., 957 S.W.2d 251, 254 (1997). There is no indication in the present case that either Mr. Taylor, or the representatives of Clark RECC were under any legal or mental disability at the time of their negotiations. The parties' intentions were clearly manifested on several occasions; Mr. Taylor made known his intent to obtain and purchase electricity from Clark RECC and representatives of Clark RECC unambiguously conveyed to Mr. Taylor their intent to provide that service. The

obtaining and provision of electricity is a legal objective for a contract. Finally, valid and sufficient consideration passed between the parties; Mr. Taylor, via his oral promise and his signature on Exhibit A promised to purchase electricity from Clark RECC and representatives of Clark RECC, in exchange, promised to provide such electricity to the home site.

Clark RECC admits that, on at least one occasion, its representatives told Mr. Taylor that providing electrical service to him should be no problem. The documents attached as exhibits further evidence its promise to Mr. Taylor. However, Clark RECC now denies that at the time it communicated with Mr. Taylor it had any definite intentions of providing him electrical service. Clark RECC cannot avoid the contract via this tactic. If there is sufficient evidence to show a meeting of the minds between the parties, one party cannot avoid the binding nature of the contract by simply denying a meeting of the minds or "because it has a different version of the agreement than that of the [other party]." *George Pridemore & Son v. Traylor Brothers, Inc.*, Ky., 311 S.W.2d 396, 397 (1958).

Further, Clark RECC cannot avoid the contract it made with Mr. Taylor based upon its assertion that performance by it will be more difficult or costly than it originally anticipated.

The rule in Kentucky in this regard has been stated as follows:

"[f]acts existing when a bargain is made or occurring thereafter making performance of a promise more difficult or expensive than the parties anticipate, do not prevent a duty from arising or discharge a duty that has arisen."

McGovney & McKee, Inc. v. City of Berea, Ky., 488 F. Supp. 1049, 1057 (E.D. Ky. 1978); see also *More v. Carnes, Ky.*, 214 S.W.2d 984, 992 (1948) (courts cannot deny enforcement of an otherwise valid contract merely because its enforcement would result in inequities in a particular case); *Inter-Southern Life Ins. Co. v. Stephenson, Ky.*, 56 S.W.2d 332, 334 (1933) (courts will

not interfere with a legitimate transaction merely because one of the parties may sustain a loss in bargaining).

In the time period between March and June 1997, the parties entered into a valid and binding contract. Mr. Taylor agreed to purchase electricity from Clark RECC, and that entity through its representatives, agreed to provide such service. When Clark RECC's offer was made, and subsequently accepted by Mr. Taylor through his words and actions, Clark RECC became bound. The present protestations regarding the cost of providing service do not relieve it of its duty to perform. Further, the evidence does not support Clark RECC claim that it never promised service to Mr. Taylor. Under the facts and circumstances of this case, Clark RECC is bound to provide electrical service to Mr. Taylor as it promised.

III. RELIEF REQUESTED FROM THIS COMMISSION

This Commission has the authority to order a utility to provide services that are adequate and reasonable. *Marshall Co. v. South Central Bell Tel. Co.*, Ky., 519 S.W.2d 616, 618 (1975); *Carr v. Cincinnati Bell, Inc.*, Ky. App., 651 S.W.2d 126, 128 (1983); K.R.S. § 278.280(3); K.R.S. § 278.260; K.R.S. § 278.040. Even if no contractual relationship is adjudged by this Commission to exist between the parties, the Rules and Regulations of Clark RECC allow this Commission to order it to provide electricity to Mr. Taylor's home site upon a determination "that such extension is reasonable". Rules and Regulations of Clark EC, 14.(f) DISTRIBUTION LINE EXTENSION.⁴ Mr. Taylor respectfully requests that this Commission order Clark RECC to comply with the contract it made with him. Clark RECC has provided electricity to this home site in the past. It provides electricity to all of Mr. Taylor's neighbors in the area. Mr. Taylor

⁴ If this Commission determines that no binding contract existed between the parties, Mr. Taylor requests relief pursuant to this section of Clark RECC's Rules and Regulations.

simply asks that Clark RECC provide the same service to him and thereby fulfill the promise that it made which induced him to purchase the land in the first place.

Such an order by this Commission would comport with Clark RECC's own Articles of Incorporation, which state that the very purpose of Clark RECC is "[t]o assist its members to wire their premises and install therein electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character....". Articles of Incorporation of Clark Rural Electric Cooperative Corporation, Article II (d). Such an order by this Commission would further comport with K.R.S. § 278.030(2) which requires that Clark RECC "shall furnish adequate, efficient, and reasonable service...". This is precisely what Mr. Taylor seeks from this Commission.

In the Order dated March 28, 2001, this Commission has requested a statement as to why this matter should not be dismissed for failure to prosecute. In this regard, Mr. Taylor states that the continuances initially requested in this case as detailed in the March 28, 2001 Order were mostly necessitated by the fact that Clark RECC had not responded to Mr. Taylor's outstanding discovery requests. On May 31, 2000, both parties requested a cancellation of the scheduled hearing date and an extension of time to file verified testimonies. Thereafter, the parties engaged in some settlement negotiations, but those negotiations proved fruitless.

Following these settlement negotiations, because of financial difficulties and other obligations, Mr. Taylor was not able to immediately recommence litigation of the issues raised in his petition. One reason for delay was that Mr. Taylor, realizing that he would not be able to build at the home site in the foreseeable future, had to secure long term living arrangements. These are the reasons for the period of delay on the part of Mr. Taylor. Neither Mr. Taylor nor the undersigned are aware of why Clark RECC also failed to file any verified testimonies or

further pleadings in this case.

The undersigned submits that substantial work has been performed in this case and that with a relatively minimal amount of additional work, the relevant issues can be presented to this Commission for resolution. On behalf of Mr. Taylor, the undersigned requests that this matter go forward and that the complaint not be dismissed because of Mr. Taylor's financial inability to immediately prosecute his claims.

Respectfully submitted,


PATRICK F. NASH
167 West Main Street, Suite 904
Lexington, Kentucky 40507
(859) 254-3232

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 27 day of April, 2001 to:

Hon. Robert Rose
GRANT ROSE & PUMPHREY
51 South Main Street
Winchester, KY 40391
ATTORNEY FOR DEFENDANT


PATRICK F. NASH

CLARK RURAL ELECTRIC COOPERATIVE CORPORATION

APPLICATION FOR MEMBERSHIP AND/OR FOR ELECTRIC SERVICE

Account #: _____ Existing Member #: _____ New Member #: 219802

Member's Name: Vaughan Taylor

Mailing Address: PO Box 4242

Morehead, Ky 40392 Phone #: 229-7157

Spouse's Name: _____

Member's S.S.#: _____ Spouse's S.S.#: _____

Member's Employer: Benton Cylinders Spouse's Employer: _____

The undersigned (hereinafter referred to as "Applicant") hereby applies for membership in, and agrees to purchase energy from the Clark Rural Electric Cooperative Corporation (hereinafter referred to as ("Cooperative")). Applicant agrees to the following terms and conditions:

1. The applicant will pay or has paid to the Cooperative the sum of ten dollars (\$10.00) which, if this application is accepted by the Cooperative, will constitute the Applicant's membership fee.
2. Applicant will purchase from the Cooperative electric energy used at address(es) designated, and will make payment of all amounts due on or before due dates. Applicant understands that failure to do so will be cause for discontinuance of electric service. In the event the Applicant fails to comply with the terms of this agreement and legal action is taken by the Cooperative to enforce the terms of this contract, Applicant agrees to pay all attorneys fees and court costs incurred as a result of the Applicant's breach. Applicant understands that the Cooperative's monthly rates will be fixed by the Kentucky Public Service Commission and/or the Board of Directors.
3. The Applicant will cause his or her premises to be wired in accordance with wiring specifications required by the State of Kentucky and/or local codes.
4. The Applicant will comply with and be bound by all of the provisions of this agreement, the charter and by-laws of the Cooperative, and such rules, regulations, and policies as may, from time to time, be adopted by the Cooperative. The Board of Directors may expel from membership and/or discontinue electric service to any member who fails or refuses to comply with any of the provisions of this agreement and/or fails or refuses to comply with the charter and by-laws of the Cooperative or its rules, regulations and policies.

5. Without being paid compensation therefore, the undersigned/applicant shall grant, transfer, convey and give to the Cooperative a perpetual easement and right and privilege of free access over, across and through the land and premises of the undersigned/applicant to erect, construct, install, place, locate and build, and thereafter use, operate, inspect, repair, maintain, service, replace and move its electric distribution system, new or existing lines of any type, wires, poles, anchors or other appurtenant parts thereof. The undersigned/applicant specifically grants to the Cooperative the right to connect to and hook up to any existing service and /or service line and/or service facility of any type that might be located on applicant's land for the purpose of providing and/or extending electric service of any type to another member of the Cooperative. The undersigned/applicant grants to the Cooperative the right and privilege to cut down and/or treat with herbicides any and all trees and bushes which are of such height and located in such proximity to the Cooperative's distribution lines that in falling may interfere with and/or create a hazard to the operation of said lines. All service lines supplying applicant with electric energy and all switches, meters, appliances and equipment constructed or installed by the Cooperative on said property shall be the sole property of the Cooperative. The Cooperative shall have the right to remove its electric distribution system of any type and all appurtenant parts thereof upon discontinuance of service for any reason. Provided, however, upon cancellations of the contract for electric service set forth herein, the perpetual easement and right and privilege of access granted by the provisions of this paragraph shall remain in full force and effect. I hereby certify to the Cooperative that I am _____ am not the owner of the land and premises referred to herein and over which the Cooperative's electric distribution system facilities will be placed. If Applicant is not the owner of the property, the property owner is:

Name: _____

Address: _____

6. Acceptance of this application by the Cooperative shall constitute an agreement between the Applicant and the Cooperative as specified in the Cooperative By-laws.

Subscribed and sworn to before me this 20 day of

May, 19 97.

Shirley Brown
NOTARY PUBLIC

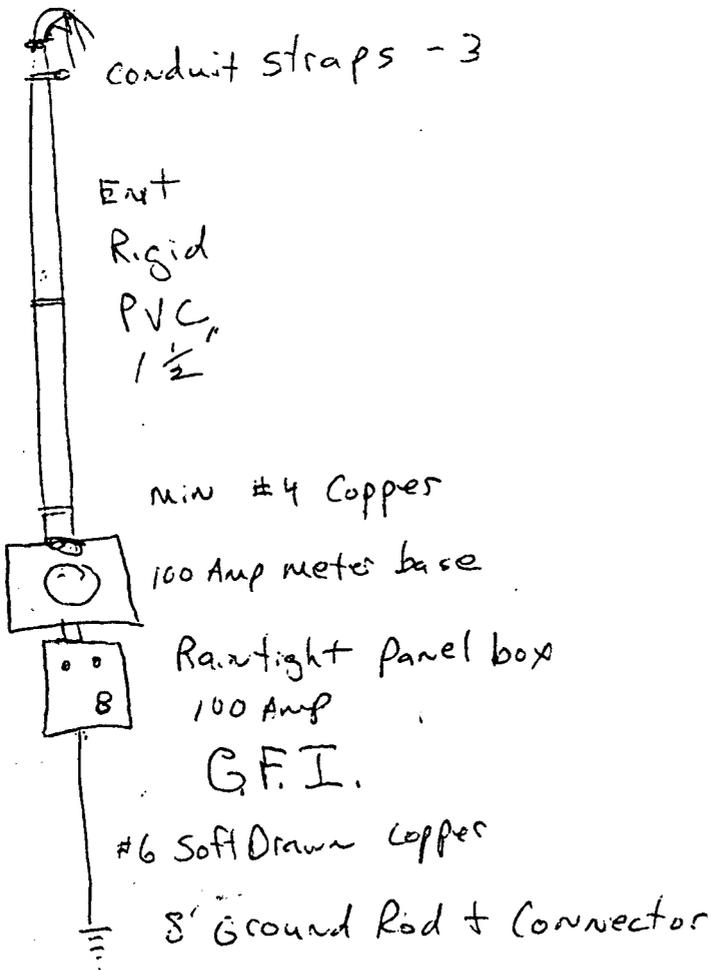
My Commission expires: _____

Date 5/28, 19 97

[Signature]
Applicant's Signature

Spouse's Signature

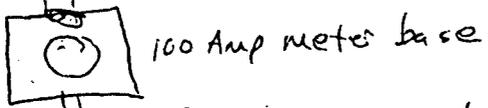
EXHIBIT B



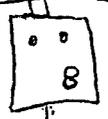
conduit straps - 3

Ext
Rigid
PVC
1 1/2"

min #4 Copper



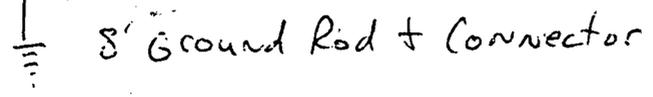
100 Amp meter base



Raintight Panel box
100 Amp

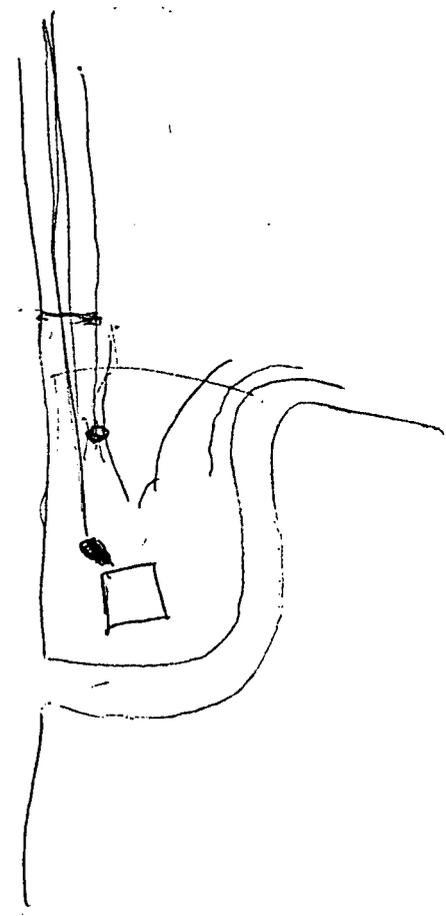
G.F.I.

#6 Soft Drawn Copper



8' Ground Rod + Connector

William Perry



Operations

Job Order

Member _____ Account Number _____

Address _____ Road _____

_____ Phone Number _____

Work to be done _____

Taken by _____ Date _____

Remarks _____

Foreman _____ Completed Date _____

EXHIBIT C

Date 11/5/28/97

Appointment 6:30 @ 15:30 Mon

Job Order No 44210

OIS Entry [Signature]

Member Data

Member Vaughn Taylor

Acct No _____

Mailing Po Box 4242

Location Between Chy Ferry & Boonesboro River

Winchester, Ky 40392

Owner Same

Phone No 229-7157 744-5544 shop

R/W Easement ok

Neighbors ? Mitchell Sidwell

Service Requested

House Temp. Service UD Service 100' Approx. Ft.

Mobile Home On Location Permits _____ Approx. Ft.

Barn New Existing _____ Approx. Ft.

Sec. Light Existing Pole Agreement

Entrance Change from _____ Amp to _____ Amp

Other meter pole service was less at one time. Scott has talk to cws.

Taken By op Per cws 9/27/99 - building on an existing foundation, poles are still there. Should have building permit in a couple of weeks.

Service Data

Membership Data

Elec. Heat _____ Kw

Member No _____

A/C _____ Volts

Old New Joint _____

Phase 100 Amps

Social Security No _____

Office Data

Engineer _____ Acct. 143 _____

WO No _____

Date _____ Acct. 252 _____

Code _____ Rate _____

EXHIBIT D

JAMES E. BICKFORD
SECRETARY



PAUL E. PATTON
GOVERNOR

COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
FRANKFORT OFFICE PARK
14 REILLY RD
FRANKFORT KY 40601

August 22, 1997

Vaughn Taylor
P.O. Box 4242
Winchester, KY 40391

RE: Construction of a house along
the Kentucky River near at
the confluence of Jouett
Creek at about river mile
173.8R, with coordinates
N37°54'31", W84°17'36"
in Clark County.

Dear Mr. Taylor:

We have reviewed your request to construct a new house at the above referenced location. We have noted that the ground elevation at the site you propose to build is above the 100-year flood elevation of 592 feet above Mean Sea Level. The portion of the property that appears to be above the 100-year floodplain includes only a portion of the property. Judging from our maps this would include the area of about 100 feet by 100 feet at the top of hill on your property. Any structure built in this area is exempt from the state floodplain permit requirements. Any buildings or fill constructed outside this area, or more specifically, below elevation 592 feet, would require a permit.

Therefore, since you have specified that you wish to build the house on the upper portion of your property, a floodplain permit will not be required at this time. Should you wish to build below elevation 592, your plans must be submitted for our review and approval.

If you have any questions, please call David Hamilton of our office at (502) 564-3410

Sincerely,

A. Leon Smothers
A. Leon Smothers, Manager
Water Resources Branch
Division of Water

DJH
pc: James B. Allen, Jr.
Frankfort Regional Office

EXHIBIT E

Memorandum

To: Bob Rose, Esq.
Grant, Rose, and Pumphrey

From: Shannon D. Messer
Clark Energy Cooperative, Inc.

Date: July 27, 2000

Re: PSC Case No. 1999-513: Vaughn Taylor Complaint

Total distance of a new power line required to extend electric service to Vaughn Taylor's proposed residence is about 4,125 feet. This distance is only an estimate pending an actual survey of the final line route and assuming we have reasonable access to the property. Total line extension costs basically depends on if Taylor plans to construct a residence or a non-residence. Line extension costs may be summarized as follows:

1. Residences. The first 1,000 feet of construction cost is free. The remaining 3,125 feet of construction has a current cost of \$5.69 per foot for a total construction cost of \$17,781.25. This cost can be refunded over a ten-year period in accordance with Clark's approved line extension tariff.
2. Non-residences. The first 300 feet of construction cost is free. The next 700 feet of construction has a current cost of \$8.72 per foot for a subtotal construction cost of \$4,704.00. This subtotal cost can be refunded over a four-year period in accordance with Clark's approved line extension tariff. The remaining 3,125 feet of construction has a current cost of \$5.69 per foot for a subtotal construction cost of \$17,781.25. This subtotal cost can be refunded over a ten-year period in accordance with Clark's approved line extension tariff. Total construction cost is \$22,485.25.

All line extension construction costs are payable in advance of construction and do not include any condemnation costs, which may be required to procure all necessary utility easements.



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

March 28, 2001

To: All parties of record

RE: Case No. 1999-513

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

A handwritten signature in black ink that reads "Stephanie J. Bell". The signature is written in a cursive style.

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P. O. Box 748
2640 Ironworks Road
Winchester, KY 40392 0748

Dimitri Vaughn Taylor
P. O. Box 4242
1220 Enterprise Drive
Winchester, KY 40391

Honorable Patrick F. Nash
Counsel for Dimitri Taylor
112 North Upper Street
Lexington, KY 40507

Honorable Robert L. Rose
Attorney for Clark Energy
Grant, Rose & Pumphrey
51 South Main Street
Winchester, KY 40391

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-513
)	
CLARK ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

O R D E R

On December 21, 1999, Dimitri Vaughn Taylor ("Complainant") filed a formal complaint against Clark Energy Cooperative, Inc. ("Clark Energy") alleging that Clark Energy improperly refused him electrical service. Complainant alleges that, prior to purchasing a plot of land on the Kentucky River, he contacted Clark Energy to inquire about extending electrical service along a set of lines and poles leading to Complainant's property that were out of use at the time. Complainant alleges that Clark Energy assured him that it would extend service to the property because it had the service right-of-way. Complainant also alleges that Clark Energy told him to obtain a building permit. Based upon this alleged representation, Complainant purchased the property and applied for the necessary building permit. Complainant alleges, however, that prior to approval of the building permit, Clark Energy took down the poles and wires leading to his property and informed him that he must build a road to his property in order to receive electrical service.

Complainant requests that he receive electrical service from Clark Energy. On January 21, 2000, the Commission issued an Order directing Clark Energy to satisfy or answer the complaint. On January 31, 2000, Clark Energy filed its answer, claiming that it is not required to extend electrical service to Complainant because no reasonable access is available to Complainant's property. To support this assertion, Clark Energy relies upon 807 KAR 5:006, Section 14(c).¹ Clark Energy argues that unless Complainant builds a road to his property upon which Clark Energy's trucks, equipment, and lines may travel, it is not obligated to extend electrical service to Complainant.²

In regard to the existing lines and poles on Complainant's property, Clark Energy claims that the line was abandoned long ago and that no part of the line is intact or can be used to extend service to Complainant's property.

Clark Energy also claims that it never gave Complainant an "ironclad" assurance that it would extend electrical service to his property. Furthermore, even if Complainant relied upon this alleged representation, that fact would not influence the final outcome of

¹ For refusal of access. When a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service. Such action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 13(5) of this administrative regulation.

² The cooperative may refuse or terminate service to an applicant or member, after proper notice for failure to comply with the cooperative tariffed rules and regulations; Commission regulations; outstanding indebtedness; noncompliance with state, local or other codes; refusal to permit access; or failure to pay bills.

Clark Energy Cooperative Tariff, Sheet No. 25.

this case. The issue presented here is whether Clark Energy's refusal of service complies with the applicable tariff provisions, regulations, and statutes, not whether Complainant relied upon Clark Energy's representation in purchasing the property.

On February 25, 2000, the Commission entered a procedural order scheduling a hearing and relative dates for discovery. On March 6, 2000, counsel for Complainant requested that the hearing be rescheduled. The Commission granted the motion. On April 21, 2000, counsel for Complainant requested another extension of time and continuance of the hearing. The Commission granted this motion as well. On May 31, 2000, Complainant requested continuance of the hearing and additional time to file verified testimony. As of the date of this Order, no verified testimony has been filed with the Commission. Excepting the complaint, answer, and motions for extensions of time, only the answer to interrogatories propounded to Clark Energy has been filed as of the date of this Order.

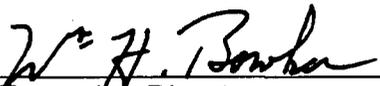
IT IS THEREFORE ORDERED that:

1. Within 30 days of the date of this Order, Complainant shall file with the Commission a statement as to why this matter should not be dismissed for failure to prosecute, accompanied by a memorandum or brief which, in light of Clark Energy's response, states why Complainant believes he may prevail at any hearing on the merits of this case.
2. If the documents referenced in ordering paragraph 1 are not received within 30 days of the date of this Order, this case will be dismissed without further Order.

Done at Frankfort, Kentucky, this 28th day of March, 2001.

By the Commission

ATTEST:



Executive Director

Deputy

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

V.

CLARK ENERGY COOPERATIVE, INC.,

RECEIVED
JUN 02 2000
PUBLIC SERVICE
COMMISSION

COMPLAINANT,

CASE NO. 99-513

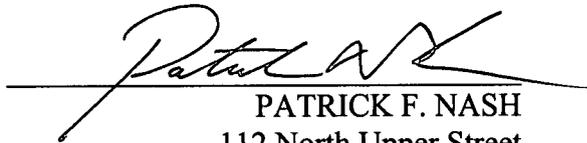
DEFENDANT.

JOINT MOTION FOR EXTENSION OF
DEADLINES AND CONTINUANCE OF HEARING

Come both parties, by counsel, and jointly request an extension of all deadlines in this case, and a postponement of the hearing.

This matter is currently set to be heard June 1, 2000. Initial discovery was provided by the defendant to the complainant on May 24, 2000. Neither side has yet filed verified testimony. The undersigned has spoken with Hon. Robert L. Rose, attorney for Clark Energy Cooperative, Inc., and both sides are in agreement that the case is not ready to be heard on June 1, 2000. Both sides therefore request an extension of all deadlines, including the deadlines for filing verified witness testimony, of at least 30 days. Further, both sides request an appropriate extension of the hearing date so as to allow the completion of discovery and the filing of the witness testimony.

Respectfully submitted,



PATRICK F. NASH
112 North Upper Street
Lexington, Kentucky 40507
(606) 254-3232
ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 31 day of May, 2000 to:

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P O Box 748
Winchester, KY 40392

Hon. Robert Rose
GRANT ROSE & PUMPHREY
51 South Main Street
Winchester, KY 40391
ATTORNEY FOR DEFENDANT


PATRICK F. NASH

RECEIVED

MAY 22 2000

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

NOTICE OF ADDRESS CHANGE

Comes now the attorney for complainant Dimitri Vaughn Taylor, and hereby notifies this Court and all parties hereto, of his change of address. All future notices and pleadings should be sent as follows:

Hon. Patrick F. Nash
167 West Main Street
First National Building, Suite 904
Lexington, Kentucky 40507
Phone Number: (859) 254-3232
Fax Number: (859) 225-4746

Respectfully submitted,


PATRICK F. NASH
167 West Main Street
First National Building, Suite 904
Lexington, Kentucky 40507
(859) 254-3232

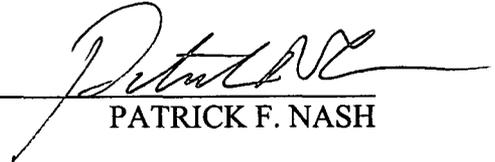
ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 19 day of May, 2000 to:

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P O Box 748
Winchester, KY 40392

Hon. Robert Rose
GRANT ROSE & PUMPHREY
51 South Main Street
Winchester, KY 40391
ATTORNEY FOR DEFENDANT


PATRICK F. NASH

RECEIVED

MAY 22 2000

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

MOTION FOR EXTENSION OF TIME TO
FILE VERIFIED WITNESS TESTIMONY
AND
MOTION TO REQUIRE ANSWERS TO
DISCOVERY REQUESTS

I. MOTION FOR EXTENSION OF TIME TO FILE
VERIFIED WITNESS TESTIMONY

Comes the complainant, Dimitri Vaughn Taylor, by counsel, and respectfully requests an extension of time to file his Verified Witness Testimony.

In support of this motion, complainant states that pursuant to the Commission's Order dated March 4, 2000, complainant served upon defendant 29 Interrogatories and 10 Requests for Production of Documents. On April 19, 2000, defendant requested an extension of time until April 29, 2000 in which to answer these discovery requests. As of the date of this motion, the undersigned has received no responses to the discovery requests.

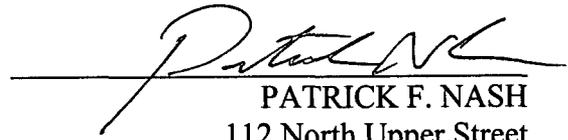
Pursuant to the Commission's Order of April 28, 2000, verified witness testimonies must be filed on May 19, 2000, and verified rebuttal testimonies must on May 26, 2000. The undersigned cannot prepare complete and relevant verified testimonies until he has received the requested discovery. Thus complainant requests an extension such that the verified testimony of

his witnesses can be filed one week after the undersigned's receipt of discovery responses.

II. MOTION TO REQUIRE ANSWERS TO
DISCOVERY REQUESTS

As stated above, defendant requested until April 29, 2000 to answer the interrogatories and requests for production of documents. To date, no such responses have been received. The undersigned respectfully requests an Order requiring responses to these discovery requests.

Respectfully submitted,


PATRICK F. NASH
112 North Upper Street
Lexington, Kentucky 40507
(606) 254-3232

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 19 day of May, 2000 to:

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P O Box 748
Winchester, KY 40392

Hon. Robert Rose
GRANT ROSE & PUMPHREY
51 South Main Street
Winchester, KY 40391
ATTORNEY FOR DEFENDANT


PATRICK F. NASH

FAX COVER SHEET

TO:	Public Service Commission
FAX NUMBER	502-564-3460
FROM:	LAW OFFICES OF PATRICK F. NASH 167 West Main Street, First National Building Suite 904 Lexington, Kentucky 40507 Phone: (859) 254-3232 Fax: (859) 225-4746
DATE OF FAX:	May 19, 2000
PAGES INCLUDING COVER PAGE:	5

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE. THANK YOU.

NOTE: Fax is for informational purpose (pleadings are due today). Original and 10 copies are being postmarked/mailed today.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
MAY 19 2000
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

MOTION FOR EXTENSION OF TIME TO
FILE VERIFIED WITNESS TESTIMONY
AND
MOTION TO REQUIRE ANSWERS TO
DISCOVERY REQUESTS

I. MOTION FOR EXTENSION OF TIME TO FILE
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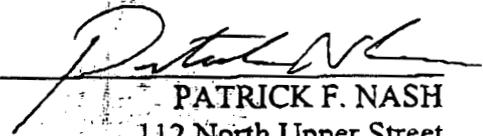
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As stated above, defendant requested until April 29, 2000 to answer the interrogatories and requests for production of documents. To date, no such responses have been received. The undersigned respectfully requests an Order requiring responses to these discovery requests.

Respectfully submitted,



PATRICK F. NASH
112 North Upper Street
Lexington, Kentucky 40507
(606) 254-3232

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 19 day of May, 2000 to:

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P O Box 748
Winchester, KY 40392

Hon. Robert Rose
GRANT ROSE & PUMPHREY
51 South Main Street
Winchester, KY 40391
ATTORNEY FOR DEFENDANT



PATRICK F. NASH

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

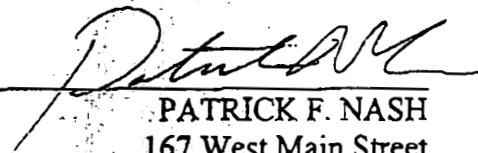
DEFENDANT.

NOTICE OF ADDRESS CHANGE

Comes now the attorney for complainant Dimitri Vaughn Taylor, and hereby notifies this Court and all parties hereto, of his change of address. All future notices and pleadings should be sent as follows:

Hon. Patrick F. Nash
167 West Main Street
First National Building, Suite 904
Lexington, Kentucky 40507
Phone Number: (859) 254-3232
Fax Number: (859) 225-4746

Respectfully submitted,


PATRICK F. NASH
167 West Main Street
First National Building, Suite 904
Lexington, Kentucky 40507
(859) 254-3232

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PATRICK F. NASH

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 15 2000

PUBLIC SERVICE
COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

v.

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

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CASE NO. 1999-513

Comes now the Defendant, Clark Energy Cooperative, Inc., hereinafter referred to as "Clark" to provide the following Answers to Interrogatories and Requests for Production of Documents dated April 7, 2000. Some of the answers to these interrogatories provided herein refer to Clark's January 28, 2000 response to a Public Service Order (PSC) order dated January 21, 2000 for the above referenced complaint and case, hereinafter referred to as "Clark's PSC Response" or "Response of Clark".

ANSWERS TO INTERROGATORIES

1. Define and describe "normal policies and practices" for availability of electric service as this phrase is used at page one of the Response of Clark Energy Cooperative (hereinafter referred to as "Clark").

ANSWER: "Normal policies and practices", "normal requisites for service", and "tariffed policies and practices" for availability of electric service all refer to satisfying relevant PSC administrative requirements or regulations, Clark's line extension tariffs and Bylaws. Clark's line extension tariffs and Bylaws are on file at the PSC and are attached to these interrogatory answers. Upon receipt of a request for new electric service, Clark's engineering personnel visits the customer site to investigate and determine the nature or type of electric facilities needed or to be constructed, right-of-way clearing requirements, reasonable access needed to construct and subsequently operate and maintain electric utility plant plus any easements that will be required. This field

investigation is conducted consistent with all relevant PSC administrative regulations and Clark's line extension tariffs and Bylaws. Reasonable access to a customer's location is specifically addressed by PSC administrative regulation 807 KAR 5:006, Section 14(c). See answers to Interrogatory No. 7 and No. 24 for additional discussion of "reasonable access" and the relevant PSC regulation. Aside from complying with these requirements, customers are required to satisfy all state and local codes and/or administrative regulations pertaining to electric service. PSC administrative regulation 807 KAR 5:006, Section 14(e) and KRS 211.350 (the "straight pipe law") require customers comply with local planning, zoning and building ordinances and comply with county and state health department ordinance governing approved septic/sewage systems, respectively. Customers must satisfy these local governmental requirements prior to an electrical inspection permit being issued. Mr. Taylor was informed of the requirements of the "straight pipe" law when he resumed his discussions with Mr. Messer at Clark in September 1999. See Clark's PSC Response.

2. Define and describe "normal requisites for service" as this phrase is used at page one of the Response of Clark.

ANSWER: See answer to Interrogatory No. 1.

3. Define and describe "field investigation by Clark's engineering personnel" as this phrase is used at page one of the Response of Clark. In your definition state what is being inspected, and how the results of the inspection relate to the availability of electric service.

ANSWER: See answer to Interrogatory No. 1.

4. Define and describe "reclaimed by nature" as this phrase is used at page one of the Response of Clark.

ANSWER: See answer to Interrogatory No. 10.

5. Define and describe "new construction would be required" as this phrase is used at page two of the Response of Clark.

ANSWER: Mr. Taylor agreed that "new construction" would be required to extend electric service to his property during the initial field meeting with Todd Peyton from Clark in June 1997. New construction would be required because the old, abandoned power line was not serviceable and did not provide access needed for utility trucks and equipment. Mr. Taylor expressed plans to build a road into his property from an adjoining neighbor during this meeting. Mr. Peyton informed Mr. Taylor that Clark would extend electric service to his property via new power line construction along his planned road. See Clark's PSC Response. "New construction" was defined to mean an all-new power line and service facilities consisting of new poles, conductor, transformer, hardware, and miscellaneous equipment, etc. The same road Mr. Taylor planned to gain access to his property was also agreed to provide Clark subsequent access needed for power line operations, maintenance and meter reading.

6. Define and describe "tariffed policies and practices" as this phrase is used at page two of the Response of Clark.

ANSWER: See answer to Interrogatory No. 1.

7. Define and describe "reasonable access... for trucks and equipment needed for construction and subsequent operations and maintenance" as this phrase is used at page two of the Response of Clark.

ANSWER: "Reasonable access" means an ability to transport and position personnel, material and equipment, e.g. digger trucks, bucket trucks and service trucks needed to construct and subsequently operate and maintain power line equipment and provide access to the customer's meter. See answer to Interrogatory No. 24 for supporting information and Clark's PSC Response.

8. Define and describe "tariffed line extension policies and practices" as this phrase is used at page four of the Response of Clark.

ANSWER: See answer to Interrogatory No. 1.

9. List all prerequisites for Mr. Taylor to obtain permanent electrical service at the property at issue. If they are different, list all prerequisites for Mr. Taylor to obtain temporary electrical service (during construction of his home) at the subject property.

ANSWER: See answer to Interrogatory No. 1.

10. Clark admits that Shannon Messer entered onto Mr. Taylor's property and inspected it in approximately October 1999. Describe in detail this inspection. Include in your description when it occurred, who was with Mr. Messer, how access was gained to Mr. Taylor's property, whether any permission was obtained for such access, the purpose for the inspection, what was inspected, what was discovered as a result of the inspection, and describe in detail the condition of the utility poles, power lines, transformers, and any other equipment relating to electrical service.

ANSWER: Shannon Messer inspected the immediate area and condition of the old, abandoned power line in October 1999. The inspection occurred shortly after Mr. Messer received a call from Vaughn Taylor's father. See answer to Interrogatory No. 20. Todd Peyton accompanied Mr. Messer on his inspection from Clark. Remnants of the old, abandoned power line were not readily visible beyond the first 850 feet of old power line accessible on foot by open field at the location of the nearest neighbor over one-half mile away. The old, abandoned power line used to continue in a straight line from the edge of this field, across the fence, onto the adjoining tract. Clark, to the best of its knowledge, is not aware of how many different properties exist between the nearest neighbor and Mr. Taylor's property, and the location of any property boundaries. No part of the old, abandoned power line was visible from the last pole in the neighbor's field. Nature had completely reclaimed the original power line route; i.e. all trees and bushes had long since re-grown to hide all evidence of the original power line right-of-way. So, Clark's personnel had no indication any portion of an old power line existed across the fence and down a steep bluff to the Taylor property at the Kentucky River.

The old, abandoned power line was obviously in a state of disrepair since much of the line conductor was down, i.e. on the ground or suspended in the air on tree limbs and branches at various heights above the ground. Mr. Peyton discovered two broken poles on the ground and a third broken pole that was badly leaning. Only eight poles and about one-half mile of conductor comprised the original power line. Poles still standing had been in place for about thirty years or longer and both Mr. Messer and Mr. Peyton believed they were no longer capable of supporting the mechanical loads of a power line because of their apparent condition and age. Line insulators used on the old, abandoned power line were 7.2 kV-rated insulators, which have not been installed for use by Clark for many years. All poles retired from the old, abandoned power were 35-foot poles although Clark's standard for many years has been to install 40-foot poles for power line construction. The transformer retired from the property where the residential cabin once stood was a small 1.5 kVA unit, which is far smaller than the typical 10 to 25 kVA units installed for many years to serve residential loads. The apparent very old vintage of these power line components supports Clark's belief and an opinion expressed by the nearest neighbor that no electric service had been available since the late-1960's. Mr. Messer is uncertain if he entered Mr. Taylor's property because he only traveled a short distance beyond the fence at the nearest neighbor's field. The re-grown power line right-of-way was too dense and steep for Mr. Messer to traverse. Mr. Peyton, who traversed the entire power line route down to the Kentucky River at Mr. Taylor's property, briefed Mr. Messer on the condition of the old, abandoned power line. Based on this report and evidence he'd seen, Mr. Messer determined the old power line had apparently been abandoned in-place, there was no access for trucks and equipment, the power line could not be salvaged, rehabilitated, and/or was not serviceable and that a potential hazard existed for rock climbers and hikers. So, Mr. Messer decided all remnants of the old, abandoned power line should be retired. No permission was obtained to perform the inspection or removal since Clark accepts the Complainant's assertion that the old, abandoned power line was

Clark's property and that Clark did not require permission to inspect or remove its facilities. Similarly, Mr. Messer, having determined that said facilities were indeed Clark's property and having determined that the old, abandoned power line was a hazard to hikers and rock climbers, Clark did not require permission to eliminate this hazard. Davis H. Elliot, a utility construction firm, was retained a few days after Mr. Messer's inspection to perform the removal work. The crew had no access for trucks and equipment and performed all the retirement work on foot using chainsaws to cut down any poles still standing and hand tools to remove all pole hardware and equipment, while all line conductor that could be reached from the ground was cut and rolled by hand. All removed hardware and equipment were carried out by hand except for old poles, which were too heavy for crewmembers to carry and abandoned on-site.

11. Clark admits to entering onto Mr. Taylor's property and cutting down utility poles. Describe in detail this incident. Include in your description how access was obtained to Mr. Taylor's property, when the pole cutting occurred, who cut the poles and who else was present, who gave permission and/or access to Mr. Taylor's property, why the poles were cut down, how many poles were cut, the condition of the poles which were cut, describe how the poles were disposed of, describe how any attachments to the poles were disposed of (lines, transformers, and any other pole attachments), and describe all equipment that was used in this operation.

ANSWER: See answer to Interrogatory No. 10.

12. Approximately one week after the poles were cut down, Mr. Taylor was told by an employee of Clark that the poles were cut down because Clark planned to run electric to his property from a different direction. Do you admit or deny that this statement was made to Mr. Taylor? If you admit the accuracy of this statement, describe the "different direction" from which Clark planned to provide electric service.

ANSWER: Clark denies making such a statement. Mr. Messer was administering Mr. Taylor's case by fall 1999, having spoken with him on numerous prior occasions. Although Mr. Messer does not recall speaking with Mr. Taylor after remnants of the old, abandoned power line was retired, Mr. Messer would have been the "employee" Mr. Taylor is

referring to. Remnants of the old, abandoned power line were not serviceable and retired for reasons discussed in Clark's PSC Response. See also answers to Interrogatories No. 1 and 5.

13. Clark has admitted that it retired the line, which previously carried electricity to Mr. Taylor's property. Explain why the decision was made to retire this line and include in your description the criteria use to determine whether a line should be retired, when the decision was made to retire, and how long the line had been in existence prior to the time that it was retired.

ANSWER: See answer to Interrogatory No. 10.

14. State when the last time that electrical service was provided to the property at issue via the poles, wires, and transformers that were retired and cut down.

ANSWER: The power line was originally built to extend electric service to a cabin on the property Mr. Taylor now owns. Clark believes that, to the best of its knowledge, no electric service has been available and the line not maintained at this location since the cabin burned down in the late-1960's. See Clark's PSC Response.

15. Mr. Taylor has been provided with photographs that were taken on his property which are captioned Image 01-21.JPG. Describe the circumstances under which these photographs were taken and include in your description an explanation of when they were taken, who took them, the reason why these photographs were taken, how access was gained to Mr. Taylor's property at the time these photographs were taken, who came onto Mr. Taylor's property on this occasion, whether permission was granted from anyone for such access, and describe any and all other activities that occurred on this occasion other than the taking of photographs.

ANSWER: Todd Peyton, an employee of Clark's engineering department, obtained the images by use of a digital camera. Mr. Messer instructed Mr. Peyton to obtain images of the old, abandoned power line route and vicinity in response to a complaint filed with the Kentucky Division of Water by Mr. Taylor against Clark. Mr. Taylor filed the complaint after Clark removed remnants of the old, abandoned power line. The images were obtained to illustrate Clark did not improperly dispose of any power line hardware and equipment. Mr. Peyton approximately followed the original route of the old, abandoned

power line offering the easiest access by foot to obtain all the images. No permission was obtained to enter the property since Clark's objective was to remove any of its property Mr. Taylor alleges to have been improperly disposed of. See answer to Interrogatory No. 10. Clark's investigation determined no improper disposal of materials occurred on Mr. Taylor's property. See Clark's PSC Response and a copy of the relevant correspondence with the Kentucky Division of Water accompanying Clark's PSC Response.

16. Mr. Taylor has noticed that sometime after the poles were cut down of his property, small tags were removed from these poles. State whether Clark removed these tags from the poles and, if so, describe that process. Include in your description the date that the tag removal occurred, who removed the tags, how access was gained to Mr. Taylor's property on this occasion, whether or not anyone gave permission for this access, the identity of each person who came onto Mr. Taylor's property on this occasion, why the tags were removed from the poles, and describe any other activities that were performed on this occasion.

ANSWER: Mr. Peyton visited the old, abandoned power line route after the contract crew reported all removal work to be completed. He noticed that the crew had not removed all "Clark RECC" (now Clark Energy) identification (I.D.) tags used to identify poles as a Clark pole in lieu of a Bell South or a Kentucky Utilities (KU) pole. I.D. tags used by Clark only provide generic ownership identification and do not enumerate the specific identify or location of poles. Mr. Peyton removed these I.D. tags as standard procedure during the follow-up inspection of the crew's work.

17. Describe any other occasion that Clark, any of its employees, or any of its contractors or subcontractors entered onto Mr. Taylor's property. Include in this description the persons involved, when the instance occurred, the purpose for the entry onto Mr. Taylor's property, and what was done on each occasion.

ANSWER: Clark, to the best of its knowledge, has not directed any employee or contractor to enter Taylor's property other than specifically noted within these interrogatories and Clark's PSC Response.

18. For the five years preceding Mr. Taylor's ownership of the property, describe each and every occasion that Clark, its employees, or its contractors and subcontractors entered onto the subject property. Include in your description the persons involved, when the instance occurred, the purpose for the entry onto the property, and what was done on each occasion.

ANSWER: Clark is aware of no such occurrences.

19. Clark admits that in early 1997, it had discussions with Mr. Taylor about providing electrical service to the subject property. Describe in detail what Clark told Mr. Taylor about its ability to provide electrical service and when these discussions occurred.

ANSWER: See Clark's PSC Response and answers to Interrogatories No. 1, No. 5 and No. 24.

20. Clark admits to have some contact with Vaughn Taylor's father regarding the issues in this case. Describe in detail each and every contact that Clark admits to having with the Vaughn Taylor's father. Include in this description who had contact with Vaughn Taylor's father, when and where the contact occurred, and the subject matter of the contact.

ANSWER: Mr. Messer recalls one phone conversation in October 1999 with a party identifying himself as Vaughn Taylor's father. The father called Mr. Messer to inquire about the problems involved with Vaughn Taylor's request for electric service. Mr. Messer reviewed the chronology of events and all the issues regarding this matter just as is presented in Clark's PSC Response. Mr. Messer's impression of this discussion was that the father seemed surprised to learn of these details. The father confirmed Vaughn Taylor had no access to the property except by boat and said his son planned to airlift a mobile home into the site in lieu of airlifting materials for constructing a cabin. The apparent surprise expressed by Mr. Taylor's father about his son's actions is what prompted Mr. Messer's curiosity to visit the area and inspect the old, abandoned power line. See answer to Interrogatory No. 10.

21. Mr. Messer has claimed that before they were cut down, the utility poles on Mr. Taylor's property represented a danger to hikers and rock climbers. Describe in detail how these poles were dangerous to hikers and rock climbers. Also state why Mr. Messer believes that hikers and rock climbers are allowed onto Mr. Taylor's property and whether Mr. Messer has ever observed any hikers or rock climbers on that property. If so, state when Mr. Messer made this observation and the identity (if known) of the hikers and rock climbers.

ANSWER: The old, abandoned power line described in the answer to Interrogatory No. 10 was obviously in a state of disrepair since much of the line conductor was down, i.e. on the ground or suspended in the air on tree limbs and branches at various heights above the ground, and several poles were broken, badly leaning and/or on the ground. Nature had reclaimed the original power line route from the edge of the field at the location of the nearest neighbor. Poles still standing had been in place for about thirty years or longer and were no longer capable of supporting the mechanical loads of a power line because of the apparent condition and age of the poles. The banks and approaches to the Kentucky River are well known isolated areas frequented by hikers and rock climbers. Mr. Taylor's property and surrounding areas are very isolated and there exists no access other than by foot down steep bluffs or by boat. The areas observed by Mr. Messer are not adequately fenced to prevent access to hikers and/or rock climbers. Similarly, Mr. Messer observed no occurrences where any property is marked as "No Trespassing" or "Private Property" to discourage any hikers and/or rock climbers from entering these isolated areas near the Kentucky River. So, Mr. Messer believed that remnants of the old, abandoned power line accessible from the ground were a hazard and could have caused or contributed to a tripping and/or falling accident involving hikers and/or rock climbers. Mr. Messer did not personally observe any hikers or rock climbers within the immediate area during his inspection but, based on his belief and knowledge, such would not be unusual and it is anticipated that a number of people frequent the area for the purpose of hiking and/or rock climbing.

22. Clark has admitted that contract labor was scheduled to remove "remnants" from Mr. Taylor's property. Describe what is meant by the term "remnants". State the identity of the contract labor that removed these remnants, including the addresses and phone numbers of each person who was involved in the removal.

ANSWER: See the answer to Interrogatory No. 10 for a description of the term "remnants". Davis H. Elliot Company, a Lexington, KY electric utility construction firm, was employed to remove remnants of the old, abandoned power line.

23. Attached to these Interrogatories and Request for Production of Documents you find a photocopy of a drawing with handwriting. It is Complainant's information and belief that this drawing and handwriting was done by an employee of Clark, possibly Mr. Messer and/or Scott Sidwell, or someone else in the Engineering Department of Clark. Please identify whether this is the handwriting and/or drawing of any Clark employees.

ANSWER: The referenced drawing did not originate with Mr. Messer, Mr. Sidwell or anyone else within Clark's engineering department. Clark, to the best of its knowledge, believes the drawing did not originate with any other employee and likely was prepared by a local electrician or William Perry, the local electrical inspector, since William Perry's appears on the drawing.

24. Clark has admitted that no truck access has ever been available to the property at issue. State when truck access became a prerequisite to providing electrical service.

ANSWER: Clark informed Mr. Taylor at the June 9, 1997 meeting that we could not reasonably satisfy a request for service without access under any circumstances. Public Service Commission administrative regulation 807 KAR 5:006, Section 14(c) clearly states a utility may refuse service when customers refuse or neglect to provide reasonable access to their premises for installation, operation and maintenance of utility facilities and meter reading. Clark's view is that installation, operation and maintenance of a power line and reading of a customer's meter is not reasonable if access is only by boat and no access is available for trucks and equipment. See the answer to Interrogatories No. 7 and No. 10 for additional information and Clark's PSC Response.

25. State whether any contacts were made by Clark with Dr. Mike Hanley (Vaughn Taylor's neighbor) regarding Vaughn Taylor's request for electrical service. If so, describe in detail the contact with Dr. Hanley. Include in this description who made the contact with Dr. Hanley, when the contact was made, and the subject matter of the contact.

ANSWER: Mr. Messer and Mr. Peyton visited the neighbor who owned the land where the first 850 feet of the old, abandoned power line traversed an open field. This visit occurred in October 1999 during Mr. Messer's inspection of the area of the abandoned power line. The neighbor stated his belief the old, abandoned power line had not been used for electric service in over thirty years. Mr. Messer and Mr. Peyton informed the neighbor of Clark's plans to remove all remnants of the old, abandoned power line although they did not know or did not subsequently determine the identity of the neighbor. See Clark's PSC Response.

26. State whether Clark is governed by any service standards, including but not limited to any service standards created by contract, franchise, or agreement between Clark and any city or government entity. If Clark is governed by service standards of any kind, describe the service standards and/or attach a copy of these service standards.

ANSWER: Clark objects to this interrogatory since same is vague and ambiguous. The Kentucky Public Service Commission, however, regulates Clark and other electric utilities.

27. State whether Clark provides electrical service to any other customers without truck access to utility poles. If so, list the names and address of those customers.

ANSWER: Some utility poles may exist where access to trucks and equipment may be difficult, but access to trucks and equipment is available at all electric services and meters located at customer premises.

28. State whether Clark provides electrical service to any other customers via poles, lines, and/or transformers of the vintage that were retired and cut down on Mr. Taylor's farm. If so, list the name and address of those customers.

ANSWER: Clark does not or could not provide electric service to any customers from remnants of any power line in the condition of the old, abandoned power line located on and to the

subject property, which has no access to trucks and equipment, cannot or has not been serviced or maintained, that is partially on the ground and/or is tangled in tree limbs and branches, and that has apparently been abandoned in-place since the late-1960's. See the answer to Interrogatory No. 10.

29. State whether Clark provides electrical service to any other customers whose property is not accessible over land, but is only accessible via water. If so, list the name and address of those customers.

ANSWER: Clark does not or could not provide service to any customers whose only access is by water or boat.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Provide an original reproduction (not a copy from a computer printer nor a photocopy) of all photographs taken by Clark, or anyone at the direction of Clark, of and/or on Mr. Taylor's property.

ANSWER: The only "photographs" Clark possesses are digital images obtained with a digital camera. So, all image hardcopies are produced from a computer printer or are a photocopy of an image printout. Clark can provide counsel for the Complainant computer image files via electronic mail or "e-mail". Alternately, Clark can upon reasonable notice in the presence of its legal counsel, permit counsel for the Complainant to view the images on a computer at Clark's principal place of business in Winchester, KY.

2. Provide a photocopy of any and all tags that were removed from the poles on Mr. Taylor's property as described in Interrogatory No. 16.

ANSWER: Clark, to the best of its knowledge, is not in possession of any I.D. tags. The normal procedure followed by Clark upon the removal of these items is to discard them into a scrap metal hopper together with other hardware and equipment, e.g. old insulator brackets, nuts and bolts, to be subsequently sold as scrap. Clark has no special file or folder, which would have been created to store the aforementioned I.D. tags.

3. Provide a copy of any and all handwritten notes or other written record relating to Vaughn Taylor, or his request for electrical service at the subject property, maintained by Scott Sidwell, Shannon Messer, and/or Todd Peyton.

ANSWER: Clark objects to this request, as same constitutes attorney-client communications or work product. Subject to said objection, Clark, to the best of its knowledge, has already submitted the requested materials and documentation. Said materials and documentation accompanied Clark's PSC Response.

4. Provide a copy of any phone messages taken by Clark from Vaughn Taylor, or from anyone else if it relates to Vaughn Taylor's request for electrical service at the subject property.

ANSWER: Clark is not aware of any phone messages that were recorded and, to the best of its knowledge, has already submitted the requested materials and documentation as part of same that accompanied Clark's PSC Response.

5. Provide a copy of any and all documents relating to any contacts by Clark with Dr. Mike Hanley as referenced in Interrogatory No. 24.

ANSWER: Clark, to the best of its knowledge, possesses no such documentation.

6. Provide a copy of any and all documents generated by Clark relating to Vaughn Taylor's complaint to the Division of Water, Division of Waste Management, Public Service Commission, and/or Environmental Protection Agency relating to the alleged improper disposal by Clark of the electric poles, wires, transformers, or other equipment that was previously located on his property.

ANSWER: Clark objects to the production of said documents as same would be documents prepared in anticipation of litigation and would constitute attorney-client communications or work product.

7. Provide a copy of each and every document related upon and/or used to answer the Interrogatories.

ANSWER: Clark possesses no such documentation other than those previously submitted as part of Clark's PSC Response.

8. Provide a copy of any and all documents, not previously requested that relate to Vaughn Taylor and/or his request for electric service at the subject property.

ANSWER: Clark has already provided all materials and documentation which are not otherwise subject to objection by attorney-client privilege, work product or other applicable objections.

9. Provide a copy of Clark's Articles of Incorporation, and any amendments thereto.

ANSWER: A copy of Clark's Articles of Incorporation accompanies the answers to these interrogatories.

10. Provide a copy of Clark's Bylaws.

ANSWER: A copy of Clark's Bylaws accompanies the answers to these interrogatories.

Respectfully submitted,

Grant, Rose & Pumphrey
51 South Main Street
Winchester, Kentucky 40391
Telephone: (606) 744-6828

By: Robert L. Rose By EL
Robert L. Rose

ATTORNEYS FOR DEFENDANT

AMENDMENT OF ARTICLES OF INCORPORATION
OF
CLARK RURAL ELECTRIC COOPERATIVE CORPORATION

KNOW ALL MEN BY THESE PRESENTS:

That we, Overt L. Carroll, President, and William N. Curry, Secretary, of Clark Rural Electric Cooperative Corporation (hereinafter called the "Corporation") do hereby certify:

That at a meeting of the Directors of the Corporation duly held on the 22nd day of April, 1997, in conformity with the constitution and laws of the Commonwealth of Kentucky, it was unanimously resolved that the amendments of the Articles of Incorporation of the Corporation hereinafter set forth be approved and recommended to the members for approval.

Further, at a meeting of the members of the Corporation duly held on the 12th day of May, 1997, in conformity with the constitution and laws of the Commonwealth of Kentucky, the following amendments of the Articles of Incorporation of the Corporation were adopted by a majority of the votes entitled to be cast by the members present in person and voting at said meeting:

1. Article I of the Articles of Incorporation shall be amended to read as follows:

ARTICLE I

The name of the Corporation shall be Clark Energy Cooperative, Inc.

2. Article II of the Articles of Incorporation shall be amended to read as follows:

ARTICLE II

The purpose for which the Corporation is organized is to produce, transmit, distribute, furnish, supply or sell electric energy to its members and non-members to the extent permitted by Kentucky law, and to engage in the transaction of any and all lawful activities authorized for Kentucky corporations pursuant to Kentucky law.

3. Section 2 (a) of Article VIII of the Articles of Incorporation shall be amended to read as follows:

ARTICLE VIII

Section 2.

(a) Signing the membership application specified in the bylaws:

4. Section 4 of Article VIII of the Articles of Incorporation shall be amended to read as follows:

ARTICLE VIII

Section 4. Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. At all meetings of the members at which a quorum is present, all questions shall be decided by a vote of a majority of the members voting thereon in person, except as otherwise provided by law, or these Articles of Incorporation. No proxy voting shall be valid. If a husband and wife hold a joint membership they shall jointly be entitled to one (1) vote and no more upon each matter submitted to a vote of a meeting of the members.

IN WITNESS WHEREOF, Overt L. Carroll and William N. Curry have made, signed and acknowledged these Amendments of Articles of Incorporation of Clark Rural Electric Cooperative Corporation (hereafter "Clark Energy Corporation, Inc."), in triplicate originals, this the 22nd day of May, 1997.

CLARK RURAL ELECTRIC COOPERATIVE CORPORATION, INC.

By: *Overt L. Carroll*
Overt L. Carroll, President

ATTEST:

William N. Curry
William N. Curry
Secretary

STATE OF KENTUCKY)
)
COUNTY OF CLARK)

I, Dana J. Graham, Notary Public within and for the State and County aforesaid do certify that on this date the foregoing instrument of writing was produced to me in my County by Clark Rural Electric Cooperative Corporation by its authorized representatives, Overt L. Carroll, President, and William N. Curry, Secretary, parties thereto, and was by them signed, acknowledged and delivered as and for their free act and deed and the free act and deed of Clark Rural Electric Cooperative Corporation.

My commission expires: April 15, 2000

Witness my hand on this the 22 day of May, 1997.

Dana J. Graham
Notary Public, State at Large

PREPARED BY THE UNDERSIGNED
MEMBER OF THE LAW FIRM OF
GRANT, ROSE & PUMPHREY
51 SOUTH MAIN STREET, WINCHESTER,
KENTUCKY 40391 - (606) 744-6828

Robert Lee Rose

RESTATED
ARTICLES OF INCORPORATION
OF
CLARK RURAL ELECTRIC COOPERATIVE CORPORATION

At a regular meeting of the membership of Clark Rural Electric Cooperative Corporation held at the Headquarters Office Building, 2640 Iron Works Road, Winchester, Kentucky 40391, on Wednesday, July 11, 1990, at 7:00 p.m., pursuant to notice given by the Secretary, the following Restatement of the Articles of Incorporation was duly moved, seconded and unanimously passed, first having been passed unanimously by the Board of Directors of said Corporation at a regular meeting on June 26, 1990:

ARTICLE I

The name of the Corporation is CLARK RURAL ELECTRIC COOPERATIVE CORPORATION.

ARTICLE II

The purpose or purposes for which the Corporation is formed are for the transmission, distribution and sale of electrical power and related services and for all other purposes as permitted under Chapter 279 of the Kentucky Revised Statutes.

ARTICLE III

The principal office of the Corporation shall be located at 2640 Iron Works Road, Winchester, Clark County, Kentucky 40391, and the Agent for Process is Overt L. Carroll, at that address.

ARTICLE IV

The operations of the Corporation are to be conducted in the counties of: BATH, BOURBON, CLARK, ESTILL, FAYETTE,

MADISON, MENIFEE, MONTGOMERY, MORGAN, POWELL, ROWAN and WOLFE, and in such other counties of Kentucky and other states as such operations may from time to time become necessary or desirable in the interest of this Corporation or of its members.

ARTICLE V

The number of directors of the Corporation shall be not less than five (5) nor more than eleven (11) as provided by the Bylaws.

ARTICLE VI

The duration of the Corporation is perpetual.

ARTICLE VII

The Corporation shall have no capital stock. Any person, firm, association, corporation, body politic, political subdivision or agency thereof within the service area, shall be eligible to become a member of the Corporation by filing an application agreeing to purchase electrical power and energy from the Corporation and to be bound by and comply with the Articles of Incorporation, Bylaws, and all rules, rate schedules and regulations adopted by the Board of Directors. Each applicant shall automatically become a member on the date of the connection of electrical service unless the Board of Directors, by resolution, denies the application for good cause. Any member may withdraw from the membership upon compliance with such uniform terms and conditions as the Board of Directors may prescribe. The Board of Directors may, after a hearing, if requested, expel any member who fails to comply with any of the

PREPARED BY:

GRANT, ROSE & PUMPHREY

51 South Main Street

Winchester, Kentucky 40391

Telephone: (606) 744-6828

By:

Robert Lee Rose

Robert Lee Rose

ARTICLES OF INCORPORATION
OF
CLARK RURAL ELECTRIC COOPERATIVE CORPORATION

The incorporators whose names are hereunto signed, being natural persons and citizens of the Commonwealth of Kentucky, have executed these Articles of Incorporation for the purpose of forming a cooperative corporation not organized for pecuniary profit pursuant to the "Rural Electric Cooperative Corporation Act" which was passed by the General Assembly of Kentucky at Special Session, 1936, and approved on January 18, 1938, in accordance with the following provisions;

ARTICLE I.

The name of the Corporation shall be "Clark Rural Electric Cooperative Corporation".

ARTICLE II.

The purpose or purposes for which the Corporation is formed are to promote and encourage the fullest possible use of electric energy in the Commonwealth of Kentucky by making electric energy available by production, transmission or distribution, or both, to or by otherwise securing the same for the inhabitants of and persons in rural areas of the Commonwealth of Kentucky at the lowest cost consistent with sound business methods and prudent management of the business of the Corporation and also by making available to the said inhabitants as aforesaid electrical devices, equipment, wiring, appliances, fixtures and supplies and all kinds of tools, equipment and machinery (including any fixtures or

property or both which may by its use be conducive to a more complete use of electricity or electric energy) operated by electricity or electric energy and, without limiting the generality of the foregoing:

(a) To generate, manufacture, purchase, acquire and accumulate electrical energy for its members and non-members to the extent permitted by the act under which the Corporation is formed and to transmit distribute, furnish, sell and dispose of such electric energy to its members and non-members to the extent permitted by the Act under which the Corporation is formed, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, supplies, apparatus, equipment and electric transmission and distribution lines or systems necessary, convenient or useful for carrying out and accomplishing any or all of the foregoing purposes;

(b) To acquire, own, hold, use, exercise and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate and in any manner dispose of franchises, rights, privileges, licenses, rights of way and easements necessary, useful or appropriate to accomplish any or all of the purposes of the Corporation;

(c) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, use, convey, sell, lease as lessor, exchange, mortgage, pledge or otherwise dispose of any and all real and personal property or any interest therein

necessary, useful or appropriate to enable the Corporation to accomplish any or all of its purposes;

(d) To assist its members to wire their premises and install therein electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing, such as are applicable to water supply and sewage disposal) and, in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install and repair electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing, such as are applicable to water supply and sewage disposal) and to reserve, acquire, endorse, pledge, guarantee, hypothecate, transfer or otherwise dispose of notes and other evidences of indebtedness and all security therefor;

(e) To borrow money, to make and issue bonds, notes and other evidence of indebtedness, secured or unsecured, for moneys borrowed or in payment for property acquired, or for any of the other objects or purposes of the Corporation; to secure the payment of such bonds, notes or other evidences of indebtedness by mortgage or mortgages, or deed or deeds of trust upon, or by the pledge of or other lien upon, any or all of the property, rights, privileges or permits of the corporation, wheresoever situated, acquired or to acquired;

(f) To do and perform, either for itself or its members,

any and all acts and things, and to have and exercise any and all powers, as may be necessary or convenient to accomplish any or all of the foregoing purposes or as may be permitted by the Act under which the Corporation is formed, and to exercise any of its powers anywhere.

ARTICLE III.

The principal office of the corporation shall be located at Winchester, in the County of Clark, Commonwealth of Kentucky.

ARTICLE IV.

The operations of the Corporation are to be conducted in the County of Clark, , , and in such other Counties as such operations may from time to time become necessary or desirable in the interest of this Corporation or of its members.

ARTICLE V.

The number of directors of the Corporation shall be seven.

ARTICLE VI.

The names and post office addresses of the directors who are to manage the affairs of the Corporation until the first annual meeting of the members or until their successors shall have been elected and shall have qualified, are:

<u>Name</u>	<u>Post Office Address</u>
J. Hughes Evans	Winchester, Ky., R.F.D. # 1
E. Ward May	Winchester, Ky., R.F.D. # 1
J. L. Skinner	Winchester, Ky., R.F.D. # 1
Gerald W. Robinson	Winchester, Ky., R.F.D. # 3
Afa J. Ballard	Winchester, Ky., R.F.D. # 3
Prewitt Davis	Lexington, Ky., R.F.D. # 7
Virgil Barnes	Mt. Sterling, Ky. R.F.D. # 1

ARTICLE VII.

The duration of the Corporation is: perpetual.

ARTICLE VIII.

Section 1. The corporation shall have no capital stock, and the property rights and interests of each member shall be equal.

Section II. the subscribers to these Articles of Incorporation shall be members of the corporation. In addition to the undersigned incorporators any person, firm, association, corporation, business trust, partnership or body politic may become a member in the Corporation by:

(a) paying in full such membership fee as shall be specified in the By-Laws of the Corporation; (b) agreeing to purchase from the Corporation the amount of electric energy hereinafter in Section 3 of this Article specified; and (c) agreeing to comply with and be bound by these Articles of Incorporation and the By-Laws of the corporation and any amendments thereto and by such rules and regulations as may from time to time be adopted by the Board of Directors of the Corporation; provided, however, that no person, firm, association, corporation, business, trust, partnership or body politic except the undersigned incorporators, or any person, firm, association, corporation, business trust, partnership or body politic accepted for membership

by the members at any meeting thereof, shall become a member in the Corporation unless and until he or it has been accepted for membership by the affirmative vote of a majority of the members of the Board of Directors of the Corporation.

Section 3. Each member shall, as soon as electric energy shall be available, purchase from the Corporation monthly net less than the minimum amount of electric energy which shall from time to time be determined by a resolution of the Board of Directors of the Corporation and shall pay therefore, and for all additional electric energy used by such member, the price which from time to time shall be fixed therefor by resolution of the Board of Directors. Each member shall also pay all obligations which may from time to time become due and payable by such member to the Corporation as and when the same shall become due and payable.

Section 4. The Board of Directors may, by the affirmative vote of not less than two-thirds (2/3) of the members thereof, expel any member of the Corporation who shall have violated or refused to comply with any of the provisions of the Articles of Incorporation or the By-Laws of the Corporation or any rules or regulations adopted from time to time by the Board of Directors. Any member so expelled may be reinstated as a member by a vote of the members at any annual or special meeting of the members.

The action of the members with respect to any such reinstatement shall be final.

Section 5. Any members of the Corporation may withdraw

from membership upon payment in full of all his debts and liabilities to the Corporation and upon compliance with and performance of such terms and conditions as the Board of Directors may prescribe.

Section 6. Membership in the Corporation and the certificate representing the same shall not be transferable, and upon the death, cessation of existence, expulsion or withdrawal of a member, the membership of such member shall thereupon terminate, and his or its certificate of membership shall be surrendered to the Corporation. Subject to the payment of all debts and liabilities of a member to the Corporation, upon any such termination of membership and the surrender of his or its membership certificate, the corporation shall pay such member or his personal representatives, an amount equal to the membership fee paid by such member. Termination of membership by death, cessation of existence, expulsion or withdrawal shall operate as a release of all right, title and interest of the member in the property and assets of the Corporation; provided, however, that such termination of membership shall not release the member from the debts or liabilities of such member to the Corporation.

In case of a lost, destroyed or mutilated certificate, a new certificate may be issued therefor upon such terms and such indemnity to the Corporation as the Board of Directors may prescribe.

Section 7. Membership in the Corporation shall be evidenced by a certificate of membership which shall be in such

form and shall contain such provisions as shall be determined by the Board of Directors not contrary to or inconsistent with the Articles of Incorporation or the By-Laws of the Corporation. Such certificate shall be signed by the President and by the Secretary of the Corporation and shall be sealed with its corporate seal.

Section 8. No membership shall be issued for less than the membership fee specified in the By-Laws of the Corporation, nor until such membership fee has been fully paid for in cash and such payment has been deposited with the Treasurer of the Corporation.

Section 9 No member shall be entitled to more than one (1) vote upon each matter submitted to a vote at any meeting of the members of the Corporation regardless of the number of memberships held by a member of the corporation.

Section 10, At all meetings of members, a member may vote by proxy executed in writing by the member. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be voted at any meeting of the members unless it shall designate the particular meeting at which it is to be voted, and no proxy shall be voted at any meeting other than the one so designated or any adjournment of such meeting. No person shall vote as proxy for more than three members at any meeting of the members and no proxy shall be valid after sixty days from the date of its execution. The presence of a member at a meeting of the members shall revoke any and all proxies theretofore executed by him and such member shall be entitled to vote at such meeting in the same manner and with the same effect as if he had

not executed a proxy

ARTICLES IX

Section 1. The By-Laws of the Corporation may fix such other terms and conditions upon which members shall be admitted to and retain membership in the Corporation not inconsistent with the Articles of incorporation or the Act under which it is organized.

Section 2. The Board of Directors shall have power to make and adopt such rules and regulations not inconsistent with these Articles of Incorporation or the By-Laws of the Corporation as it may deem advisable for the management, administration and regulation of the business and affairs of the corporation.

Section 3. Neither the incorporators nor any other member of the Corporation shall be personally responsible for any debt, obligation or liability of the Corporation.

Section 4. Directors of the Corporation shall be members thereof.

ARTICLE X.

Subject to the provisions of any mortgage given by the Corporation and within sixty (60) days after the expiration of each fiscal year the Board of Directors, after paying or providing for the payment of all operating expenses of the Corporation including an amount for prospective operating expenses for a reasonable period, and all interest and installments on account of the principal of notes, bonds or other evidences of indebtedness of the Corporation which shall have become due and be unpaid, or which shall have accrued at the end of the fiscal year but which shall

not be then due, and after paying or making provisions for the payment of all taxes, insurance and all other non-operating expenses which shall have become due and be unpaid, and all taxes, insurance and all other non-operating expenses which shall have accrued at the end of the fiscal year but which shall not be then due, shall apply the revenues and receipts of the Corporation remaining thereafter for the following purposes and in the following order of priority:

1. the establishment and maintenance of a reserve for the payment of interest on and principal of all outstanding notes, bonds or other evidences of indebtedness of the Corporations in an amount which shall equal the amount of principal and interest required to be paid in respect of such notes, bonds or other evidences of indebtedness during the ensuing fiscal year;

2. the establishment and maintenance of a general reserve fund for working capital, insurance, taxes, new construction, depreciation, obsolescence, and contingencies in an amount which the Board of Directors shall deem reasonable;

3. the establishment and maintenance of a reserve for an educational fund to be used for teaching cooperation in an amount not to exceed five per cent (5%) of the balance of the revenue and receipts of the corporation remaining after the reserves hereinabove provided for have been established;

and all revenues and receipts not needed for the above and foregoing purposes shall be returned, paid or abated to the members as a patronage dividend or refund on the basis and in the manner

provided in the act under which the Corporation is organized, provided, however, that in no case shall any such patronage dividend or refund be returned, paid or abated to any member who is indebted to the Corporation until such indebtedness is paid or arrangements in respect thereof satisfactory to the Board of Directors shall have been made.

ARTICLE XI.

The Corporation may amend, alter, change or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter prescribed by law.

In Witness Whereof, we hereunto subscribed our names this 15th day of March 1938.

J. HUGHES EVANS
E. WARD MAY
J. L. SKINNER
GERALD W. ROBINSON
AFA J. BALLARD
PREWITT DAVIS
VIRGIL BARNES

STATE OF KENTUCKY)
) SS
COUNTY OF CLARK)

I, Georgia Thomas, a Notary Public in and for said County and state do hereby certify that this instrument of writing from J. Hughes Evans, E. Ward May, J. L. Skinner, Gerald W. Robinson, Afa J. Ballard, Prewitt Davis and Virgil Barnes, was this day produced to me by the above parties and was acknowledged by the said J. Hughes Evans, E. Ward May, J. L. Skinner, Gerald W. Robinson, Afa J. Ballard, Prewitt Davis, and Virgil Barnes to be their act and deed.

Given under my hand and seal this 15th day of March,
1938.

My commission expires October 20, 1938.

(Seal)

GEORGIA THOMAS
Notary Public in and for
Clark County, Kentucky

STATE OF KENTUCKY) SCT.

I, Charles D. Arnett, Secretary of State of the Commonwealth of Kentucky, have examined the within Articles of Incorporation of the Clark Rural Electric Cooperative Corporation and have found same legal and valid. I hereby approve said Articles of Incorporation and I hereby certify that one of the five copies filed with me has been retained by me as Secretary of State of the Commonwealth of Kentucky and recorded in my office in Articles of Incorporation Book, and that I have delivered four copies of these Articles of Incorporation to the Incorporators of this Corporation.

In Witness Whereof, I have hereunto set my hand and affixed my seal.

Done at Frankfort, Kentucky, this March 16th 1938.

CHAS D. ARNETT
Secretary of State
By C. D. Roberts
Chief Corporations Clerk
Commonwealth of Kentucky
Office of the
Secretary of State

Certificate

I, Charles D. Arnett, Secretary of State for the Commonwealth of Kentucky, do certify that the foregoing writing has been carefully compared by me with the original record thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of Articles of Incorporation of Clark Rural Electric Cooperative Corporation, filed in this office Mar. 16, 1938.

In Witness Whereof, I have hereunto set my hand and affixed my official seal.

Done at Frankfort this 16th day of March, 1938

(Seal)

CHARLES D. ARNETT
Secretary of State
By Ora L. Adams
Assistant

March 16, 1938

I, Thomas Cooper, Dean of the College of Agriculture, University of Kentucky, do certify that on this March 16, 1938, there has been filed in my office as Dean of the College of Agriculture, Articles of Incorporation of the Clark Rural Electric Cooperative Corporation and that the foregoing writing is an exact copy of said Articles of Incorporation as the same are on file in my office.

In Witness thereof, I have hereunto set my hand this 16th day of March, 1938.

THOMAS COOPER
Dean, College of Agriculture
University of Kentucky.

STATE OF KENTUCKY
COUNTY OF CLARK

I, Linville Jackson, Clerk of the Clark Co. Court, Ky., do certify that the foregoing Articles of Incorporation of Clark Rural Electric Cooperative Corporation, was on the 16 day of March, 1938, produced to me in my office and ordered to be recorded, Whereupon the same and this and the proceeding certificates have been recorded in my office.

Given under my hand this April 16, 1938

LINVILLE JACKSON, CLERK
By Eunice J. Ramsey D.C.

**Rules, Regulations
& Bylaws of
Clark
Energy Cooperative**

CLARK  ENERGY

COOPERATIVE

A Touchstone Energy[®] Cooperative 

Reprinted January 2000

Rules and Regulations of Clark EC

as filed with the Kentucky Public Service Commission

All of the following Rules and Regulations were approved by the Public Service Commission. It is important that you review them carefully. The changes are designed so that charges for service are more equitable for the entire membership of the Cooperative.

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1. SCOPE

This Schedule of Rules and Regulations is a part of all contracts for receiving electric service from the Cooperative and applies to all service received from the Cooperative whether the service received is based upon a contract, agreement, signed application, or otherwise. No employee or individual director of the Cooperative is permitted to make an exception to rates or Rules and Regulations. Rates and service information can be obtained from the Cooperative's office or Cooperative personnel.

2. REVISIONS

These Rules and Regulations may be revised, amended, supplemented, or otherwise changed from time to time after approval of Clark Energy Cooperative's Board of Directors and the Public Service Commission. Such changes when effective shall have the same force as the present Rules and Regulations. The Members shall be informed of any changes as soon as possible, after adoption by the Board of Directors, through the Cooperative's monthly newsletter or direct mailing.

3. CONSUMER'S RESPONSIBILITY FOR COOPERATIVE'S PROPERTY

All meter, service connections and other equipment furnished by the Cooperative shall be, and remain, the property of the Cooperative. The member shall exercise

proper care to protect the property of the Cooperative on its premises; and in the event of loss or damage to the Cooperative's property arising from neglect of the member to care for same, the cost of necessary repairs or replacement shall be paid by the member.

4. CONTINUITY OF SERVICE

The Cooperative shall use reasonable diligence to provide a constant and uninterrupted supply of electric power and energy, but if such a supply should fail or be interrupted or become defective through act of God, or the public enemy, or by accident, strikes, labor troubles, or by action of the elements, or permits needed, or for any other cause beyond the reasonable control of the Cooperative, the Cooperative shall not be liable.

5. RELOCATION OF LINES

The Cooperative will cooperate with all political subdivisions in the construction, improvement or rehabilitation of public streets and highways. It is expected that these political subdivisions will give reasonable notice to permit the Cooperative to relocate its lines to permit the necessary road construction.

If the Cooperative's poles, anchors, and other appurtenances are located within the confines of the public right(s)-of-way, the Cooperative shall make the necessary relocation at its own expense. If the Cooperative's poles, anchors or other facilities are located on private property, the political subdivision then shall agree to reimburse the Cooperative. Upon request by member-property owner, where facilities are to be relocated, relocation will be considered provided adequate right-of-way can be obtained for the relocation requested. The member-owner will be required to pay the cost of materials necessary to make the requested changes unless one or more of the following conditions are met:

- (a) The relocation is made for the convenience of the Cooperative.
- (b) The relocation will result in a substantial improvement in the Cooperative's facilities or their location.
- (c) That the relocation is associated with other regularly scheduled conversion or construction work and can be done at the same time.
- (d) Per member-owner request when right-of-way is provided. In such instance member-owner will be required to pay for materials to make requested changes.

6. SERVICES PERFORMED FOR MEMBERS

The Cooperative's personnel shall not while on duty make repairs or perform service to the member's equipment or property except in cases of emergency or to protect the public or member's person or property. When such emergency services are performed, the member shall be charged for such service(s) at the rate of time and material(s) used.

7. APPLICATION FOR SERVICE

Each prospective member desiring electric service will be required to sign the Cooperative's "Application for Membership and for Electric Service," also, sign a contract when applicable, before service is supplied by the Cooperative and provide the Cooperative with necessary easements or right(s)-of-way permits over property owned by the prospective customer.

8. MEMBERSHIP FEE

No membership fee is required to become a member of the Cooperative.

9. RIGHT OF ACCESS

Each member shall give and grant right of access to the Cooperative without paid compensation to his, hers, or its lands and premises for the purpose of meter reading, placing, locating, building, constructing, operating, replacing, rebuilding, relocating, repairing, improving, enlarging, extending and maintaining on, over, or under such lands and premises, or removing therefrom its electric distribution system new or existing lines, wires, poles, anchors and other necessary or appurtenant parts.

10. DISCONTINUANCE OF SERVICE OR CHANGE OF SERVICE LOCATION

Any member requesting discontinuance of service, or change of service from one location to another, shall give the Cooperative three (3) days' notice in person, in writing, or by telephone provided such notice does not violate contractual obligations.

11. CHARGES FOR MEMBER REQUESTED RECONNECTION

The Cooperative will make no charge for connecting service or discontinuance of service. There shall be a fee of \$15.00 for each service connection thereafter occurring more frequently than once each twelve-month period for the member.

12. RESALE OF POWER BY MEMBER

All purchased electric service used on the premises of the member shall be supplied exclusively by the Cooperative, and the member shall not directly or indirectly sell, sublet, or otherwise dispose of the electric service or any part thereof, except by written contract.

13. TEMPORARY SERVICE

Facilities that are temporary in nature such as for construction contractors, sawmills, oil wells, carnivals, etc. will be provided to consumers desiring such facilities, provided they pay an advance fee equal to the reasonable cost of providing and removing such facilities.

14. DISTRIBUTION LINE EXTENSION

I. Normal Extensions. An extension of 1,000 feet or less shall be made by the Cooperative to its existing distribution line without charge for a prospective consumer who shall apply for and contract to use the service for one (1) year or more and provides guarantee for such service. The "service drop" to the point of attachment from the distribution line at the last pole shall not be included in the foregoing measurements.

II. Other Extensions.

- (a) When an extension of the Cooperative's line to serve an applicant or group of applicants amounts to more than 1,000 feet per consumer, the Cooperative may, if not inconsistent with its filed tariff, require the total cost of the excessive footage over 1,000 feet per consumer to be deposited with the Cooperative by the applicant or applicants based on the average estimated cost per foot of the total extension.
- (b) Each consumer receiving service under such extension will be reimbursed under the following plan: Each year for a period of not less than ten (10) years, which for the purpose of this rule shall be the refund period, the Cooperative shall refund to the consumer or consumers who paid for the excessive footage the cost of 1,000 feet of the extension in place for each additional consumer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. In no case shall the total amount refunded exceed the amount paid the Cooperative. After the end of the refund period, no refund will be required to be made.
- (c) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the Cooperative shall refund to the applicant who paid for the extension a sum equivalent to the cost of 1,000 feet of the extension installed for each additional consumer connected during the year, but in no case shall the total amount refunded exceed the

amount paid to the Cooperative. After the end of the refund period from the completion of the extension, no refund will be required to be made.

- (d) Nothing contained herein shall be construed as to prohibit the Cooperative from making extensions under different arrangements provided such arrangements have been approved by the Commission.
- (e) Nothing herein shall be construed as to prohibit the Cooperative from making at its expense greater extensions than herein prescribed, should its judgment so dictate, provided like free extensions are made to other consumers under similar conditions.
- (f) Upon complaint to and investigation by the Commission, the Cooperative may be required to construct extensions greater than 1,000 feet upon a finding by the Commission that such extension is reasonable.

15. DISTRIBUTION LINE EXTENSIONS TO MOBILE HOMES

- (a) All extensions of up to 150 feet from the nearest facility shall be made without charge.
- (b) Extensions greater than 150 feet from the nearest facility and up to 300 feet shall be made provided the consumer shall pay the Cooperative a "consumer advance for construction" of fifty dollars (\$50) in addition to any other charges required by the Cooperative for all consumers. This advance shall be refunded at the end of one (1) year if the service to the mobile home continues for that length of time.
- (c) For extensions greater than 300 feet and less than 1,000 feet from the nearest facility, the Cooperative may charge an advance equal to the reasonable costs incurred by it for that portion of the service beyond 300 feet plus fifty dollars (\$50).
- (d) This advance shall be refunded to the consumer over a four (4) year period in equal amounts for each year the service is continued.
- (e) If the service is discontinued for a period of sixty days, or should the mobile home be removed and another not take its place within sixty (60) days, or be replaced by a permanent structure, the remainder of the advance shall be forfeited.
- (f) No refunds shall be made to any consumer who did not make the advance originally.
- (g) For extensions beyond 1,000 feet from the nearest facility, the extension policies are the same as normal distribution line extensions.

16. DISTRIBUTION LINE EXTENSION TO STRUCTURES AND/OR FACILITIES OTHER THAN RESIDENCES (HOUSES OR MOBILE HOMES)

I. The cooperative will extend service to structures and facilities other than residences under the following conditions:

- (a) Adequate right-of-way easement to construct extension will be made available to the cooperative.
- (b) All applicable fees are to be paid at the time of application of service.
- (c) Extensions of up to 150 feet from the nearest facility shall be made without additional charge for line construction.
- (d) Extensions greater than 150 feet from the nearest facility and up to 300 feet shall be made provided the consumer shall pay the utility a "consumer advance for construction" of fifty (\$50) dollars in addition to any other charges required by the utility. This advance shall be refunded at the end of one (1) year if the service to the facility continues for that length of time.
- (e) For extensions greater than 300 feet and less than 1000 feet from the nearest facility, the utility may charge an advance equal to the reasonable costs incurred by it for that portion of the service beyond 300 feet plus fifty (\$50) dollars.
 1. This advance shall be refunded to the consumer over a four (4)

year period in equal amounts for each year the service is continued.

2. If the service is discontinued for a period of sixty (60) days, or should the facility be removed and another not take its place within sixty (60) days, or be replaced by a permanent structure, the remainder of the advance shall be forfeited.
3. No refunds shall be made to any consumer who did not make the advance originally.
4. Structures must be wired and pass electrical inspection prior to construction of the extension.

II. Extensions made under item (e) shall be made on an "Estimated Average Cost" per foot of line. This cost may be revised and updated at six-month intervals.

III. For line extensions beyond 1,000 feet from the nearest facility, the extension policies are the same as normal distribution line extensions.

IV. The Cooperative retains full ownership of all extensions and electrical facilities installed by the Cooperative.

17. ELECTRIC UNDERGROUND EXTENSIONS

On file in headquarters office - copies to be furnished to member upon request.

18. DISCONTINUANCE AND REFUSAL OF SERVICE

The Cooperative may refuse or terminate service to an applicant or member, after proper notice for failure to comply with the Cooperative's tariffed rules and regulations; Commission regulations; outstanding indebtedness; noncompliance with state, local or other codes; refusal to permit access; or failure to pay bills. If disconnect is for failure to comply with Cooperative's tariffed rules and regulations; Commission regulations; noncompliance with state, local or other codes; or refusal to provide access, the member shall be given 10 days' notice advance termination notice that complies with 807 KAR 5:006, Section 13 (5). If disconnect is for failure to pay bill, the member shall be given ten (10) days' written notice and cutoff shall be effected not less than twenty-seven (27) days after the mailing date of the original unpaid bill.

If a dangerous condition is found to exist on the member's premises, which could subject any person to imminent harm or result in substantial damage to the property of the Cooperative or others, service shall be refused or terminated without advance notice. The Cooperative shall notify the member immediately in writing and, if possible, orally of the reasons for the termination. Such notice shall include the corrective action to be taken by the member or Cooperative before service can be restored.

The Cooperative may terminate service to a member without advance notice if the Cooperative has evidence that a member has obtained unauthorized service by illegal use or theft. The consumer will be notified within 24 hours after such termination in accordance with 807 KAR 5:006, Section 14(1)(3)(g).

The termination notice requirements of this subsection, pursuant to KAR 5:006, Section 14(2)(c), shall not apply to a particular residential member when prior to discontinuance of service that person presents to the Cooperative a written certificate, signed by a physician, registered nurse, or public health officer, that such discontinuance will aggravate an existing illness or infirmity on the affected premises, in which case discontinuance may be effected not less than thirty (30) days from the date the utility notifies the customer, in writing, of state and federal programs which may be available to aid in payment of bills and the office(s) to contact for such possible aid.

19. RECONNECTION

The Cooperative in all cases of refusal or discontinuance of service as herein defined where the cause for refusal or discontinuance of service has been corrected and tariffed rules and regulations of the Cooperative and the Commission have been complied with, the Cooperative shall reconnect existing service within 24 hours and shall install and connect new service within 72 hours.

When advance notice is required, such notice may be given by the Cooperative by mailing by United States mail, postage prepaid, to the last known address of the applicant or member.

20. METER TESTS

The Cooperative will, at its own expense, make periodical tests and inspections of all its meters in order to maintain a high standard of accuracy and to conform with the regulations of the Public Service Commission. The Cooperative will make additional tests of the meter at the request of the member provided a fee of \$30.00 is paid in advance. In case the test made at the member's request shows that the meter is accurate within two percent (2%), fast or slow, no adjustment will be made in the member's bill, and the fee paid will be forfeited to cover the cost of testing. In case the test shows the meter is in excess of two percent (2%), fast or slow, an adjustment will be made in the member's bill in accordance with the Public Service Commission's Rules and Regulations.

21. FAILURE OF METER

In the event the meter should fail to register, the member shall be billed for the period starting at the date of failure. If the date of meter failure cannot be determined with reasonable precision, information such as last meter test and historic usage pattern for the member will be used to determine period of underbilling and to adjust the member's account. If that data is not available, then average usage of similar member loads will be used in calculating time period and adjustment. If the consumer and the cooperative are unable to agree on an estimate of the time period during which the error existed, the Commission shall determine the issue. The Cooperative will not require member repayment of underbilling to be made over a period shorter than a period coextensive with the underbilling.

22. CONSUMER EQUIPMENT

Point of delivery — The point of delivery is the point as designated by the Cooperative on member's premises where current is to be delivered to building or premises; namely, the point of attachment. A member requesting a delivery point different from the one designated by the Cooperative will be required to pay the additional cost of providing the service at such delivery point. All wiring and equipment beyond this point of delivery shall be supplied and maintained by the member.

23. MEMBER OR CONSUMER'S WIRING STANDARDS

All wiring of member or consumer must conform to Cooperative requirements and accepted modern standards, as exemplified by the requirements of the National Electrical Code. The Cooperative, however, assumes no responsibility in respect to the type, standard of construction, protective equipment or the condition of the member's property, and will not be liable for any loss or injury to persons or property occurring on the premises or property of the member. The member will have complete responsibility for all construction, operation, and maintenance beyond the meter.

24. INSPECTION

The Cooperative shall inspect any installation before electricity is introduced, or at any later time, and reserves the right to reject any wiring or appliances not in accordance with the National Electrical Code or other governing bodies, but such inspection or reject shall not render the Cooperative liable or responsible for any loss or damage resulting from defects in the installation, wiring, or appliances, or from violation of the Cooperative's rules or from accidents which may occur upon member's premises.

25. BILLING

The Cooperative will mail through the United States Postal Service a statement to each member for electrical service each month for service rendered the previous month. All charges are net and payable within (10) days from the date of the statement. Failure to receive a statement will not release the member from payment obligations.

26. FIELD COLLECTION CHARGE

A charge of twenty-five dollars and fifty cents (\$25.50) will be assessed when a Cooperative representative makes a trip to the premises of a consumer for the purpose of terminating service. The charge may be assessed if the Cooperative representative actually terminates service or if, in the course of the trip, the consumer pays the delinquent bill to avoid termination. The charge may also be made if the Cooperative representative agrees to delay termination based on the customer's agreement to pay the delinquent bill by a specific date. The Cooperative may make a field collection charge only once in any billing period.

27. RECONNECTION CHARGE FOR DISCONNECTION OF SERVICE

If service is disconnected for non-payment of bills or violation of the utility's rules or commission regulations, a charge of \$35 will be made for reconnecting service due and payable at time of such reconnection. If the consumer requests reconnection after regular working hours, the charge will be \$48.00.

28. DEPOSITS

The Cooperative may require a minimum cash deposit or guaranty to secure payment of bills, except for customers qualifying for service reconnection pursuant to 807 KAR 5:006, Section 15, Winter Hardship Reconnection. Service may be refused or discontinued for failure to pay the deposit. The required deposit is to accumulate interest, as prescribed by KRS 278.460, at 6% per annum and will be refunded or credited to the customer's bill on an annual basis by the Cooperative, except that no refund or credit will be made if the customer's bill is delinquent on the anniversary date of the deposit.

The deposit may be waived upon a member's showing of satisfactory credit or payment history, and required deposits will be returned after eighteen (18) months if the member has established a satisfactory payment record for that period. If a deposit has been waived or returned and the customer fails to maintain a satisfactory payment record, a deposit may then be required. The Cooperative may require a deposit in addition to the initial deposit if the member's classification of service changes or if there is a substantial change in usage. Upon termination of service, the deposit, any principal amounts, and any interest earned and owing will be credited to the final bill with any remainder refunded to the member.

In determining whether a deposit will be required or waived, the following criteria will be considered:

1. Previous payment history with the Cooperative. If the member has no previous history with the Cooperative, statements from other utilities, banks, etc. may be presented by the member as evidence of good credit.
2. Whether the member has an established income or line of credit.
3. Length of time the member has resided or been located in the area.
4. Whether the member owns property in the area.
5. Whether the member has filed bankruptcy proceedings within the last seven years.
6. Whether another member with a good payment history is willing to sign as a guarantor for an amount equal to the required deposit.

If a deposit is held longer than eighteen (18) months, the member will be notified in writing by a general mailer or bill stuffer that the member may request in writing that the deposit be recalculated on member's actual usage. If the deposit differs by more than ten dollars (\$10.00), the Cooperative may collect any underpayment and shall refund any overpayment by check or credit to the member's bill. No refund will be made if the bill is delinquent at the time of the recalculation.

All members' deposits shall be based upon actual usage of the customer at the same or similar premises for the most recent 12-month period, if such information is available. If usage information is not available, the deposit will be based on the average bills of similar customers and premises in the system. The deposit amount shall not exceed 2/12 of the customer's actual or estimated annual bill where bills are rendered monthly or 3/12 where bills are rendered bimonthly.

29. RETURN CHECK CHARGE

The Cooperative will apply to a member's account a charge of \$13.00 for each member's check returned to the Cooperative.

30. MONITORING OF CUSTOMER USAGE

At least once annually the Cooperative will monitor the usage of each customer according to the following procedures:

1. The member's annual usage for the most recent 12-month period will be compared with the annual usage for the 12 months immediately preceding that period.
2. If the annual usage for the two periods is substantially the same or if any difference is known to be attributed to unique circumstances, such as unusual weather conditions, common to all members, no further review will be done.
3. If the annual review indicates KWH usage to be 200% higher or 50% lower and it cannot be attributed to a readily identified cause, the Cooperative will compare the member's monthly usage for the same months of the preceding year.
4. If the cause for the usage deviation cannot be determined from an analysis of the customer's meter reading and billing records, the Cooperative will contact the customer by telephone or in writing to determine whether there have been any changes such as number of household members or work staff, additional or different appliances, or changes in business operations.
5. Where the deviation cannot be otherwise explained, the Cooperative will test the member's meter to determine whether it shows average error greater than 2 percent fast or slow.
6. The Cooperative will notify the customers of the investigation, its findings, and any refunds or backbilling in accordance with 807 KAR 5:006, Section 10 (4) and (5).

In addition to the annual monitoring, the Cooperative will immediately investigate usage deviations brought to its attention as a result of its on-going meter reading or billing processes or member inquiry. Any accounts that are determined to have unusually high usage or unusually low usage will be processed in accordance with 808 KAR 5:006, Section 10(4) and (5).

31. LEVELIZED BILLING PAYMENT PLAN

OBJECTIVE: To establish a procedure to equalize a member's bill based on the latest twelve (12) month's usage without accumulating a large credit or debit balance on the account.

A. AVAILABILITY: Available to all Clark Energy Cooperative residential members who have received service at their present location for one year.

B. TERMS OF POLICY:

1. Any member may be set up on levelized billing at any time of the year if the account is paid up to date.
2. The levelized billing plan may be cancelled by the member at any time.
3. The member agrees to pay the levelized amount specified including security light amount, if applicable, within ten days from the billing each month.

C. How the Levelized Billing Payment Plan is determined:

1. The member's bill is levelized by averaging energy charges on twelve (12) months of usage history.
2. Add other charges and credits as appropriate.
3. Actual monthly charges are calculated based on the meter reading.
4. The difference in actual and average charges is called the "deferred balance." There are two (2) deferred balances:
 - (a.) The current deferred balance which is the difference in the actual and the average charges for the most recent bill.
 - (b.) The prior deferred balance which is the accumulated difference in the actual and average charges for the prior bills.

How To Reach Us

Please have your account number ready when you call. The number, for example (1234567890), is located on the front of your bill in the top left hand corner of the portion you keep for your records. The number also appears on the mailing label of your monthly issue of *Kentucky Living* as (KL 1234567890).

OUTAGES AND EMERGENCIES

Call 744-4251 or 1-800-992-3269.

Dispatchers are on duty 24 hours a day.

BILLING INQUIRIES AND OTHER SERVICES:

Call during office hours Monday through Friday.

WINCHESTER (headquarters) — 7:30 a.m.- 5:00 p.m. Phone — 744-4251 or 1-800-992-3269

FRENCHBURG — 8:00 a.m.- 4:30 p.m.

Phone — 768-2383

STANTON — 8:00 a.m.- 4:00 p.m.

Phone — 663-4330

UNITED STATES DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Statement of Nondiscrimination

STATEMENT OF NONDISCRIMINATION

Clark Energy Cooperative is the recipient of Federal financial assistance from the Rural Utilities Service (RUS), an agency of the U.S. Department of Agriculture, and is subject to the provisions of Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and the rules of the U.S. Department of Agriculture, which provide that no person in the United States on the basis of race, color, national origin, age, or handicap shall be excluded participation in, admission or access to, denied the benefits of, or otherwise be subjected to discrimination under any of this organization's programs or activities.

The person responsible for coordinating this organization's nondiscrimination compliance efforts is Overt L. Carroll, President and CEO. Any individual, or specific class of individuals, who feels that this organization has subjected them to discrimination may file a written complaint with this organization; or the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250; or the Administrator, Rural Utilities Service, Washington, D.C. 20250. Complaints must be filed within 180 days after the alleged discriminatory action, or by such later date to which the Secretary of Agriculture or the Administrator of RUS extends the time for filing. Identity of complainants will be kept confidential except to the extent necessary to carry out the purposes of the rules and regulations of the U.S. Department of Agriculture.

**CLARK ENERGY COOPERATIVE INC.
P.O. Box 748, Winchester, Kentucky 40392**

BYLAWS**ADOPTED AT A REGULAR MEETING OF THE BOARD OF DIRECTORS**

The aim of Clark Energy Cooperative, hereinafter called the "Cooperative," is to make electric energy available to its members at the lowest cost consistent with sound economy and good management.

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- § 1.02 Application for Membership
- § 1.03 Acceptance into Membership
- § 1.04 Joint Membership
- § 1.05 Conversion of Membership
- § 1.06 Membership Fee and Other Deposits or Fees
- § 1.07 Termination of Membership
- § 1.08 Service to Non-Members
- § 1.09 Purchase of Electric Power and Energy: Power Production by Member; Application of Payments to All Accounts
- § 1.10 Excess Payments Credited as Member-Furnished Capital
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- § 2.01 Property Interest of Members
- § 2.02 Non-Liability for Debts of the Cooperative

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- § 7.01 Interest or Dividends on Capital Prohibited
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Article VIII — DISPOSITION AND PLEDGING OF PROPERTY; DISTRIBUTION OF SURPLUS ASSETS ON DISSOLUTION

- § 8.01 Disposition and Pledging of Property
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Article IX — SEAL**Article X — FINANCIAL TRANSACTIONS**

- § 10.01 Contracts
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Article XI — WAIVER OF NOTICE**Article XII — AMENDMENTS — (CAPITALS)****Article XIII — RULES OF ORDER****ARTICLE I
MEMBERSHIP**

SECTION 1.01. Eligibility. Any person, firm, association, corporation, or body politic or political subdivision or agency thereof (each hereinafter referred to as "person," "applicant," "him," or "his") shall be eligible to become a member of, and, at one or more premises owned or directly occupied or used by him, to receive electric service from Clark Energy Cooperative (hereinafter called the "Cooperative"); however, no person shall hold more than one membership in the Cooperative.

SECTION 1.02. Application For Membership. Application for membership — wherein the applicant shall agree to purchase electric power and energy from the Cooperative and be bound by and to comply with all provisions of the Cooperative's Articles of Incorporation, Bylaws, and all rules, rate schedules and regulations adopted by the Board of Directors pursuant thereto (the obligations embraced by such agreement being hereinafter called "membership obligations") — shall be made in writing on such form as is provided therefor by the Cooperative. With respect to any particular classification of service for which the Board of Directors shall require it, such application shall be accompanied by a supplemental contract, executed by the applicant on such form as is provided therefor by the Cooperative. The membership application shall be accompanied with any service security deposit, service connection deposit or fee, facility extension fee or contri-

bution in aid of construction (hereinafter referred to as other deposits or fees) that may be required by the Cooperative, which fees and other deposits shall be refunded in the event the application is denied by the Board.

SECTION 1.03. Acceptance Into Membership. Upon complying with the requirements set forth in Section 1.02, any applicant shall automatically become a member on the date of his connection for electric service; PROVIDED, that the Board of Directors may by resolution deny an application and refuse to extend service upon its determination that the applicant is not willing or is not able to satisfy and abide by the Cooperative's terms and conditions of membership or that such application should be denied for other good cause; PROVIDED FURTHER, that any person whose application, for sixty (60) days or longer, has been submitted but not denied by the Board of Directors and who has not been connected by the Cooperative for electric service, by filing written request therefor with the Cooperative at least thirty (30) days prior to the next meeting of the Board of Directors, shall have his application submitted to and approved or disapproved by a vote of the Directors at such meeting.

SECTION 1.04. Joint Membership. A husband and wife may apply for a joint membership. The words, "member," "applicants," "persons," "his" and "him" as used in these Bylaws shall include a husband and wife applying for or holding a joint membership, unless clearly distinguished in the text; and all provisions

relating to the rights, powers, terms, conditions, obligations, responsibilities and liabilities of membership shall apply equally, severally and jointly to them. Without limiting the generality of the foregoing —

- (a) the presence at a meeting of either or both shall constitute the presence of one member and a joint waiver of notice of the meeting;
- (b) the vote of either or both shall constitute, respectively, one joint vote: PROVIDED, that if both be present but in disagreement on such vote, each shall cast only one-half (1/2) vote;
- (c) notice to, or waiver of notice signed by, either or both shall constitute, respectively, a joint notice or waiver of notice;
- (d) suspension or termination in any manner of either shall constitute, respectively, suspension or termination of the joint membership;
- (e) either, but not both concurrently; shall be eligible to serve as a director of the Cooperative, but only if both meet the qualifications required therefor, and
- (f) neither will be permitted to have additional service connections except through their one joint membership.

SECTION 1.05. Conversion of Membership. Any membership may be converted to a joint membership upon the written request of the holder thereof and the agreement by such holder to comply with the Articles of Incorporation, Bylaws, and rules and regulations adopted by the Board.

A joint membership may be converted to a single membership upon the written request of a party to the joint membership and by the party who shall hold the single membership agreeing to comply with the Articles of Incorporation, Bylaws, and rules and regulations adopted by the Board.

Upon the death of either spouse who is a party to a joint membership, such membership shall be held solely by the survivor. On any type of conversion of a membership the capital credits of the former membership shall pass to the new membership created by the conversion.

SECTION 1.06. Membership Fee and Other Deposits or Fees. No membership fee is required to become a member of the Cooperative. Payment of deposits required shall entitle the member to one service connection. A service connection deposit or fee in such amount as may be prescribed by Clark Energy Cooperative and any other deposits or fees required by Clark Energy Cooperative shall be paid by the member for each additional service connection requested him.

SECTION 1.07. Termination of Membership. Any member may withdraw from membership upon compliance with such uniform terms and conditions as the Board may prescribe. The Board may but only after due hearing if such is requested by him, by the majority vote of the Board expel a member who fails to comply with any of the provisions of the Articles of Incorporation, Bylaws or rules or regulations adopted by the Board. Any expelled member may be reinstated by the vote of the Board or by vote of the members at any annual or special meeting. The membership of a member who for a period of six (6) months after service is available to him, has not purchased electric energy from the Cooperative, or of a member who has ceased to purchase energy from the Cooperative, for a period of six (6) months, may be cancelled by resolution of the Board.

Upon the withdrawal, death, cessation of existence or expulsion of a member, the membership of such member shall thereupon terminate. Termination of membership in any manner shall not release a member or his estate from any debts due the Cooperative.

SECTION 1.08. Service to Non-Members. The Cooperative shall render service to its members only; provided, however, that service may be rendered upon the same terms and conditions as are applicable to members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members; and provided further, that should the Cooperative acquire any electric facilities dedicated or devoted to the public use it may, for the purpose of continuing service and avoiding hardship and to an extent which together with all other persons served by the Cooperative on a non-member basis shall not exceed forty per centum (40%) of the total number of persons served by the Cooperative, continue to serve the persons served directly from such facilities at the time of such acquisition without requiring that such persons become members, and provided further that such non-members shall have the right to become members upon nondiscriminatory terms.

SECTION 1.09. Purchase of Electric Power and Energy; Power Production by Member; Application of Payments to All Accounts. The Cooperative shall use reasonable diligence to furnish its members with adequate and dependable electric service, although it cannot and therefore does not guarantee a continuous and uninterrupted supply thereof; and each member, for so long as such premises are owned or directly occupied or used by him, shall purchase from the Cooperative all central station electric power and energy purchased for use on all premises to which electric service has been furnished by the Cooperative pursuant to his membership, unless and except to the extent that the Board of Directors may in writing waive such requirements, and shall pay therefor at the times, and in accordance with the rules, regulations, rate classifications and rate schedules (including any monthly minimum account that may be charged without regard to the amount of electric power and energy actually used) established by the Board of Directors and, if in effect, in accordance with the provisions of any supplemental contract that may have entered into as provided for in Section 1.02. Production or use of electric energy on such

premises, regardless of the source thereof, by means of facilities which shall be interconnected with Cooperative facilities, shall be subject to appropriate regulations as shall be fixed from time to time by the Cooperative. Each member shall also pay all other amounts owed by him to the Cooperative as and when they become due and payable. When the member has more than one service connection from the Cooperative, any payment by him for service from the Cooperative may in the discretion of the Cooperative be applied to any of his outstanding accounts.

SECTION 1.10. Excess Payments to be Credited as Member-Furnished Capital. All amounts paid for electric service in excess of the cost thereof shall be furnished by members as capital, and each member shall be credited with the capital so furnished as provided in Article VII of these Bylaws.

SECTION 1.11. Access to Lands, Premises and Easements. Without being paid compensation thereof each member shall grant and give to the Cooperative free access to his, her or its lands and premises including the necessary written easements for the purpose of placing, locating, building, constructing, operating, replacing, rebuilding, relocating, repairing, improving, enlarging, extending and maintaining on, over or under such lands and premises, or removing therefrom its electric distribution system, new or existing of lines, wires, poles, anchors and other necessary or appurtenant parts thereof. The Board of Directors may expel from membership and/or discontinue electric service to any member who fails or refuses to comply with the provisions of this Bylaw.

ARTICLE II

RIGHTS AND LIABILITIES OF MEMBERS

SECTION 2.01. Property Interest of Members. Upon dissolution of the Cooperative, after all debts and liabilities of the Cooperative shall have been paid; and, all capital furnished through patronage shall have been retired as provided in these Bylaws, the remaining property and assets of the Cooperative shall be distributed among the members who made application therefor within one year in the proportion which the aggregate patronage of each bears to the total patronage of all members during the ten (10) years next preceding the date of the filing of the certificate of dissolution.

SECTION 2.02. Non-liability for Debts of the Cooperative. The private property of the members shall be exempt from either execution or other liability for the debts of the Cooperative and no member shall be liable or responsible for any debts or liabilities of the Cooperative.

ARTICLE III

MEETING OF MEMBERS

SECTION 3.01. Annual Meetings. The annual meeting of the members shall be held during the month of June or July each year, at such place in one of the counties in Kentucky within which the Cooperative serves, and beginning at such hour, as the Board of Directors shall from year to year fix: PROVIDED, that, for cause sufficient to it, the Board of Directors may fix a different date for such annual meeting not more than forty-five (45) days prior or subsequent to the day otherwise established for such meeting in this Section. It shall be the responsibility of the Board of Directors to make adequate plans and preparations for the annual meeting and any special meeting. Failure to hold the annual meeting at the designated time and place shall not work a forfeiture or dissolution of the Cooperative.

SECTION 3.02. Special Meetings. A special meeting of the members may be called by the Board of Directors, by any five directors or by petition signed by not less than twenty (20) percent of the then-total members of the Cooperative, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided in Section 3.03. Such a meeting shall be held at such place in one of the counties in Kentucky within which the Cooperative serves, on such date, not sooner than thirty-five (35) days after the call for such meeting is made or a petition therefor is filed, and beginning at such hour as shall be designated by him or those calling or petitioning for the same.

SECTION 3.03. Notice of Member Meetings. Written or printed notice of the place, day and hour of the meeting and, the purpose or purposes of said meeting including an agenda shall be delivered to each member not less than ten (10) days nor, except as provided in Article VIII, more than sixty (60) days prior to the date of the meeting, either by mail or newspaper advertisement in a newspaper or newspapers circulated within the service area, at the direction of the President or the Secretary (or, in the case of a special meeting, at the direction of those calling the meeting). Any such notice delivered by mail may be included with member service billings or as an integral part of or with the Cooperative's monthly newsletter and/or its monthly insert, if any, in the *Kentucky Living*. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the Cooperative, with postage thereon prepaid not later than 4:30 p.m. on the 10th day prior to the meeting date. In making such computation, the date of the meeting shall not be counted. The incidental and non-intended failure of any member to receive a notice deposited in the mail addressed to the member at his address as shown on the Cooperative's books shall not invalidate any action which may be taken by the members at any such meeting, and the attendance in person of a member at any meeting of the members shall constitute a waiver of notice of such meeting unless such attendance shall be for the express purpose of objecting to the transaction of any busi-

ness, or one or more items of business, on the ground that the meeting shall not have been lawfully called or convened. Any member attending any meeting for the purpose of making such objection shall notify the Secretary prior to or at the beginning of the meeting of his objection.

SECTION 3.04. Quorum. Business may not be transacted at any meeting of the members unless there are present in person properly registered at least one hundred (100) members of the Cooperative, except that, if less than a quorum is present at any meeting, a majority of those present in person may without further notice adjourn the meeting to another time and date not less than forty-five (45) days later and at any place in one of the counties in Kentucky within which the Cooperative serves; PROVIDED, that the Secretary shall notify any absent members of the time, date and place of such adjourned meeting by delivering notice thereof as provided in Section 3.03. At all meetings of the members, whether a quorum be present or not, the Secretary shall annex to the meeting minutes, or incorporate therein by reference, a list of those members who were registered as present in person.

SECTION 3.05. Voting. Each member shall be entitled to only one vote upon each matter submitted to a vote at any meeting of the members. Voting by members other than members who are natural persons shall be allowed upon the presentation to the Cooperative, prior to or upon registration at each member meeting, of satisfactory evidence entitling the person presenting the same to vote on behalf of the non-natural person member. At all meetings of the members, all questions shall be decided by a majority of the members voting thereon, except as otherwise provided by law or by the Cooperative's Articles of Incorporation or these Bylaws.

SECTION 3.06. Proxies Prohibited. Voting by Proxy is prohibited by these Bylaws.

SECTION 3.07. Agenda. No proposal shall be voted upon at the Annual Meeting unless it has been placed on the agenda at least forty (40) days prior to such meeting. Any legitimate proposal may be placed on the agenda by any member by filing a copy of each proposal signed by at least fifty (50) other members with the Secretary within the time allowed, with a request that it be submitted to the Annual Meeting for consideration.

SECTION 3.08. Order of Business. The order of business at the annual meeting of the members and, insofar as practicable or desirable, at all other meetings of the members shall be essentially as follows:

- (1) Report on the number of members present in person in order to determine the existence of a quorum;
- (2) Reading of the notice of the meeting and proof of the due giving thereof, or of the waiver or waivers of notice of the meeting as the case may be;
- (3) Consideration of approval of minutes of previous meetings of the members and the taking of necessary action thereon;
- (4) Presentation and consideration of reports of officers, directors and committees;
- (5) Report on the election of directors;
- (6) Unfinished business;
- (7) New business as proposed within Section 3.07 guidelines, and
- (8) Adjournment.

ARTICLE IV DIRECTORS

SECTION 4.01. General Powers. The business and affairs of the Cooperative shall be managed by a board of nine (9) directors which shall exercise all of the powers of the Cooperative except such as are by law, or by the Cooperative's Articles of Incorporation or Bylaws conferred upon or reserved to the members.

SECTION 4.02. Election and Tenure of Office. Three (3) board members shall be elected at each annual meeting of the members for terms of three (3) years according to the following schedule:

2000	2001	2002
District 5	District 2	District 1
District 7	District 3	District 4
District 9	District 6	District 8

After 1992, directors from each directorate shall continue to be elected for three (3) year terms on the same rotating schedule listed above.

All contested elections shall be by secret ballot. Board members shall serve until the annual meeting in the year during which their term expires and until their successors have been elected and qualified subject to the provisions of these Bylaws as to removal of directors.

If an election of board members shall not be announced on the day designated herein for the annual meeting, or at any adjournment thereof, a special meeting of the members shall be held for the purpose of announcing the election of board members within a reasonable time thereafter. Board members shall be elected by a plurality vote of the members.

SECTION 4.03. Qualifications. Directors of Clark Energy Cooperative shall:

- (a) Be a member of good standing of the Cooperative and receive service therefrom at his primary residential abode within the district from which he is elected.

(b) Not be a close relative of an incumbent director or of an employee of the Cooperative. A "close relative" is defined as either a spouse, child, grandchild, parent, grandparent, brother or sister, or to persons unmarried to each other but who are cohabitating as husband and wife.

(c) Not be employed by the Cooperative, East Kentucky Power Cooperative Corporation, any member cooperative of East Kentucky Power Cooperative Corporation or a competing utility company.

(d) Not be drawing retirement benefits, disability benefits or worker's compensation benefits from the Cooperative.

(e) Not have been employed by the Cooperative within the last five (5) years.

(f) Not become a candidate or hold an elective public office except that of a member of a school board.

All persons elected as a Director after January 1, 2000 shall attain the status of an Accredited Cooperative Director by NRECA within six (6) years of his/her election as a Director or he/she shall be ineligible to thereafter serve as a Director of Clark Energy Cooperative, Inc., provided however, this Subsection shall not apply to persons serving as a Director on September 28, 1999.

Upon establishment of the fact that a nominee for a director lacks eligibility under this Section or as may be provided elsewhere in these Bylaws, it shall be the duty of the chairman presiding at the meeting at which such nominee would otherwise be voted upon to disqualify such nominee. Upon the establishment of the fact that any person being considered for, or already holding, a directorship or other position of trust in the Cooperative lacks eligibility under this Section, it shall be the duty of the Board of Directors to withhold such position from such person, or to cause him to be removed therefrom, as the case may be. Nothing contained in this Section shall, or shall be construed to, affect in any manner whatsoever the validity of any action taken at any meeting of the Board of Directors, unless such action is taken with respect to a matter which is affected by the provisions of this Section and in which one or more of the directors have an interest adverse to that of the Cooperative.

All members of the Board of Directors are prohibited from doing any business with the Cooperative other than the normal purchase of power from the Cooperative.

SECTION 4.04. Districts. The territory served or to be served by the Cooperative shall be divided into nine (9) districts, giving due consideration to roads, streams or other logical district lines and other proper factors. Each district shall be represented by one (1) board member. The present boundaries of said nine (9) districts shall be as follows:

District 1

All assigned service territory in Madison County, Kentucky, and now represented on the Board of Directors by Virgil O. Ginter.

District 2

All assigned service territory in Powell County, Kentucky, which is encompassed in the following boundary: Beginning at the common corner of Clark, Powell and Estill counties; thence in an easterly direction with the Powell/Estill County line which is Red River, as it meanders to its intersection with the Mountain Parkway; thence in an easterly direction with the Mountain Parkway a short distance to its intersection with Hardwicks Creek Road; thence in a northerly direction with Hardwicks Creek Road to its intersection with 12th Street in Clay City, Kentucky; thence in a northerly direction with 12th Street in Clay City, Kentucky; thence in a northeasterly direction, a short distance to Kentucky Highway 15; thence in an easterly direction with Kentucky Highway 15 to Red River near Turkey Knob; thence in a northerly direction with the meanders of Red River to Old Clay City Road; thence leaving any roadway or river in a northerly direction to the Montgomery County line at a point just east of Toler Mountain; thence in a northwesterly direction with the Montgomery/Powell County line to the intersection with the Clark County line; thence continuing in a southerly direction with Powell/Clark County line to the point of beginning and now represented on the Board of Directors by Steve Hale.

District 3

All assigned service territory in Estill and Wolfe counties, Kentucky, and all assigned service territory in Powell County, Kentucky, which is not included in Districts 2 and 4, and basically being the southern part of Powell County, which is encompassed in the following boundary: Beginning at the common point where Powell, Clark and Estill counties adjoin; thence in a basically southeasterly direction with the Powell/Estill County line to its intersection with Lee County; thence in an easterly direction with the Powell/Lee County line to its intersection with Wolfe County; thence in a northeasterly direction with the Powell/Wolfe County line to the common corner of Wolfe, Powell and Menifee counties; thence in a northwesterly direction along the Menifee/Powell County line to its intersection with Upper Cane Creek Road; thence in a southeasterly direction with Upper Cane Creek Road to Cane Creek Road; thence continuing in a southeasterly direction with Cane Creek Road to Kentucky Highway 15; thence in a westerly direction with Kentucky Highway 15 to 12th Street in Clay City, Kentucky; thence in a southwesterly direction with 12th Street in Clay City, Kentucky, to Hardwick's Creek Road; thence continuing in a southwesterly direction with Hardwick's Creek Road to the Mountain Parkway; thence in a northwesterly direction, a short distance, with the Mountain Parkway to Red

River; thence meandering in a westerly direction with Red River to the point of beginning and now represented on the Board of Directors by Pauline B. Tuttle.

District 4

All assigned service territory in Powell County, Kentucky, which is encompassed in the following boundary: Beginning at a point in Kentucky Highway 15 in Powell County, Kentucky, near Turkey Knob; thence in an easterly direction with Kentucky Highway 15 to a point where Kentucky Highway 15 intersects with Cane Creek Road; thence in a northeasterly direction with Cane Creek Road to Upper Cane Creek Road; thence in a northerly direction with Upper Cane Creek Road to the Menifee/Powell County line; thence in a northwesterly direction with Powell/Menifee County line to the intersection of the common corner between Montgomery, Menifee and Powell counties; thence in a westerly direction with the Montgomery/Powell County line to a point just east of Toler Mountain; thence leaving any roadway or other defined monument in a southerly direction to the intersection of the Old Clay City Road and Red River; thence in a southeasterly direction with Red River to the point of beginning and now represented on the Board of Directors by Gale Means.

District 5

All assigned service territory in Rowan and Morgan counties, Kentucky, and all assigned service territory in Bath and Menifee counties, Kentucky, which is encompassed in the following boundary: Beginning at a point at the intersection of Indian Creek with Powell and Menifee counties; thence in a southeasterly direction along the Menifee/Powell County line to the intersection with Wolfe County; thence in an easterly direction with the Menifee/Wolfe County line to the Tower Rock area; thence along the territorial boundary between Clark Energy Cooperative, Inc. and Licking Valley RECC, first in a northerly direction and thence in an easterly direction to the intersection of the Menifee and Morgan County line; thence first in a northeasterly direction with the Menifee/Morgan County line to the intersection with Rowan County and Cave Run Lake; thence leaving Cave Run Lake along the territorial boundary between Clark Energy Cooperative, Inc. and Grayson RECC, first in a northerly direction and then turning a westerly direction and continuing with the territorial boundary between Clark Energy Cooperative, Inc. and Grayson RECC, to where Grayson RECC territory ends; thence continuing with the territorial boundaries between Clark Energy Cooperative, Inc. and various other utility suppliers in a westerly direction to a point which intersects with Kentucky Highway 36 in Olympia, Kentucky; thence in a southerly direction with Kentucky Highway 36 to Stonequarry Road; thence with Stonequarry Road in a southwesterly direction to Sim Long Branch Road; thence in a southeasterly direction to Sim Long Branch Road; thence in a southeasterly direction with Sim Long Branch to US Highway 460 to Kentucky Highway 713 (Indian Creek Road); thence in a southwesterly direction with Indian Creek Road to the intersection of Indian Creek Road with Patrick Cemetery Road; thence meandering in a southerly direction with Patrick Cemetery Road to the intersection of Patrick Cemetery Road with Amos Cut Road; thence continuing with Amos Cut Road in a southerly direction to its intersection with Amos Ridge Road (near the pipeline crossing); thence leaving the road in a straight line in a southeasterly direction from the intersection of Patrick Cemetery Road and Amos Ridge Road to the Jewell Cemetery on McCausey Ridge Road; thence in a straight line in a southeasterly direction from the Jewell Cemetery on McCausey Ridge Road to the intersection of East Fork Indian Creek with Morgan Hollow Creek; thence meandering in a southwesterly direction with East Fork Indian Creek to the intersection of East Fork Indian Creek with East Fork Powell Branch; thence meandering in a southwesterly direction with East Fork Powell Branch to the intersection of East Fork Powell Branch with Indian Creek to the point of beginning and now represented on the Board of Directors by Seldon Fannin.

District 6

All assigned service territory in Montgomery, Menifee and Bath counties, Kentucky, which is encompassed in the following boundary: Beginning at a point in Kentucky Highway 11 at the Montgomery/Powell County line; thence in an easterly direction with the Montgomery/Powell County line; to the common point between Montgomery, Menifee and Powell counties; thence in a southeasterly direction with the Powell/Menifee County line to the intersection of Indian Creek; thence in a northerly direction with Indian Creek to the intersection of Indian Creek with East Fork Powell Branch; thence meandering in a northeasterly direction with East Fork Powell Branch to the intersection of East Fork Powell Branch with East Fork Indian Creek; thence meandering northeasterly with East Fork Indian Creek to the intersection of East Fork Indian Creek with Morgan Hollow Creek; thence northwesterly in a straight line from the intersection of East Fork Indian Creek with Morgan Hollow Creek to the Jewell Cemetery on McCausey Ridge Road; thence continuing northwesterly in a straight line from the Jewell Cemetery on McCausey Ridge Road to the intersection of Amos Ridge Road with Amos Cut Road (near the pipeline crossing); thence in a northerly direction first with the Amos Cut Road to the intersection with the Patrick Cemetery Road; thence meandering with the Patrick Cemetery Road in a northerly direction to its intersection with Indian Creek Road; thence in a northwesterly direction with Indian Creek Road (Kentucky Highway 713) to U.S. Highway 460; thence in a northwesterly direction with U.S. Highway 460 to the intersection of Sim Long Branch Road; thence in a northwesterly direction with

Sim Long Branch Road to its termination; thence continuing in a northeasterly direction to Stonequarry Road; thence in a northerly direction with Stonequarry Road to Kentucky Highway 36; thence in a northerly direction with Kentucky Highway 36 to Olympia, Kentucky; thence with the territorial boundaries with various utilities in a westerly direction to the Montgomery/Bath County line; thence in a southerly direction with the Bath/Montgomery County line to Spencer Road at Hope, Kentucky; thence in a westerly direction with Spencer Road (KY Highway 713) to its intersection with McCormick Road; thence in a southwesterly direction along McCormick Road to its intersection with U.S. Highway 460; thence in a southeasterly direction with U.S. Highway 460 to Camargo-Levy Road; thence in a southerly direction with the Camargo-Levy Road to the Sawmill Road; thence continuing in a southerly direction with Sawmill Road to Kentucky Highway 11; thence in a southerly direction with Kentucky Highway 11 to the point beginning and now represented on the Board of Directors by James Phelps.

District 7

All assigned service territory in Montgomery, Bourbon and Bath counties, Kentucky, which is encompassed in the following boundary: Beginning at the common point where Montgomery, Powell and Clark counties intersect; thence in an easterly direction with the Powell/Montgomery County line to its intersection with Kentucky Highway 11; thence in a northerly direction with Kentucky Highway 11 to the Sawmill Road; thence continuing in a northerly direction with Sawmill Road to the Camargo-Levy Road; thence continuing in a northerly direction with the Camargo-Levy Road to US Highway 460 at Camargo, Kentucky; thence in a northwesterly direction with US Highway 460 to McCormick Road; thence in a northeasterly direction along McCormick Road to its intersection with KY Highway 713 (Spencer Road); thence in an easterly direction with Spencer Road to the Montgomery/Bath County line at Hope, Kentucky; thence in a northwesterly direction near the Montgomery/Bath County line but extending into Bath County with the territorial boundary to the Bourbon County line; thence in a westerly direction with the territorial boundary to Kentucky Highway 627; thence in a southerly direction with Kentucky Highway 627 to the Clark County line; thence in an easterly direction with the Bourbon/Clark County line to the Montgomery County line; thence in a southeasterly direction with the Montgomery/Clark County line to the point of beginning and now represented on the Board of Directors by O.H. Caudill Jr.

District 8

All assigned service territory in Clark County, Kentucky, which is encompassed in the following boundary: Beginning at the point where Upper Howard's Creek intersects the Clark/Madison County line; thence in an easterly direction with the Clark/Madison County line to where Madison County adjoins Estill County; thence in an easterly direction with the Clark/Estill County line to the common corner of Clark, Powell and Estill counties; thence in a northerly direction with the Clark/Powell County line to the Clark/Montgomery County line; thence in a northwesterly direction with the Clark/Montgomery County line to where it intersects with the Bourbon County line; thence in a westerly direction with the Clark/Bourbon County line to its intersection with Kentucky Highway 627; thence in a southerly direction with Kentucky Highway 627 and the territorial boundary to the abandoned C&O Railroad right-of-way just west of the Clark Energy Headquarters Building; thence in a southeasterly direction with the watershed between Dry Fork Creek and Big Stoner Creek in Clark County, Kentucky, to a point where Kentucky Highway 89 intersects with the Ruckerville Road; thence in a southerly direction with Ruckerville Road to the second intersection with the L&N Railroad; thence in a southeasterly direction with the railroad to Dry Fork Creek Road; thence in a southeasterly direction with Dry Fork Creek Road to Upper Howard's Creek; thence in a southerly direction with Upper Howard's Creek to the point of beginning and now represented on the Board of Directors by William Nelson Curry.

District 9

All assigned service territory in Fayette County, Kentucky, and all assigned territory in Clark and Bourbon counties, Kentucky, which is encompassed in the following boundary: Beginning at the common corner between Clark, Madison and Fayette counties; thence in an easterly direction with the Clark/Madison and Fayette counties; thence in an easterly direction with the Clark/Madison County line (which is the Kentucky River) to the intersection of Upper Howard's Creek with the Kentucky River; thence with Upper Howard's Creek in a northerly direction to its intersection with Dry Fork Creek Road; thence in a northerly direction with Dry Fork Creek Road to the L&N Railroad; thence in a northeasterly direction with the L&N Railroad to the intersection with Ruckerville Road; thence in a northerly direction with Ruckerville Road to the intersection of Kentucky Highway 89 and Ruckerville Road; thence in a northwesterly direction with the watershed between Dry Fork Creek and Big Stoner Creek in Clark County, Kentucky, to a point at the intersection of Kentucky 15 and the abandoned C&O Railroad right-of-way just west of the Headquarters Building of Clark Energy Cooperative; thence in a northerly direction with the territorial boundary of Clark Energy Cooperative and Kentucky Utilities, to the Bourbon County line; thence extending into Bourbon County on Kentucky Highway 627 in a northwesterly direction to a point just south of Paris, Kentucky; thence with the territorial boundary of Clark Energy Coop-

erative and Kentucky Utilities in a southerly direction to a point just west of the common corner between Bourbon, Fayette and Clark counties; thence continuing with the territorial line between Clark Energy Cooperative and Kentucky Utilities in basically a southern direction with the territorial boundary to the point of beginning and now represented on the Board of Directors by William P. Shearer.

SECTION 4.05 Nominations.

(a) It shall be the duty of the Board of Directors to appoint not later than 5:00 p.m. of the fiftieth (50) day prior to the Annual Meeting of the members nor more than one hundred-twenty (120) days prior to the Annual Meeting of the members, a Committee of Nominations consisting of nine (9) members of the Cooperative, with one member being appointed from each district.

No officer or member of the Board of Directors of the Cooperative shall be appointed a member on the Committee of Nominations.

(b) It shall be the responsibility of the Committee on Nominations to select a candidate to run for office of Director for each district to fill the vacancy caused by the expiration of a Director's term. The Committee on Nominations shall prepare and post its nominations in a conspicuous manner in the lobby of the Cooperative Headquarters building not later than 5:00 p.m. of the forty-fifth (45th) day prior to the date set for the Annual Meeting, at which the election of Directors shall be announced.

Any fifty (50) or more qualified members of any district may, by written or printed petition, make other nominations from the membership of their district for the office of Director, by affixing their signatures and addresses to the petition. In no event shall a member sign a petition for more than one (1) candidate. In the event a member signs petitions for more than one (1) candidate, then his signature shall be invalid on all petitions signed by him.

Petition or petitions by qualified members nominating candidates for the Office of Director shall be filed at the Headquarters Office of the Cooperative during regular office hours of the Cooperative, but in no event later than 5:00 p.m. on the fortieth (40th) day prior to the date set for the Annual Meeting and said nominating petitions shall be posted by the Secretary in a conspicuous manner in the lobby of the Cooperative Headquarters Building not less than twenty-five (25) days prior to the date set for the Annual Meeting if, after examination by the Provost, it is determined by said Provost that said petition or petitions meet the requirements of the Bylaws, Articles of Incorporation and the laws of the Commonwealth of Kentucky. A cut-off date of ninety (90) days prior to the Annual Meeting shall be established in determining whether a member is in good standing and qualified for the purposes of signing nominating petitions and/or voting in the election of Directors.

SECTION 4.06. Appointment of Provost. The Board of Directors shall have the duty of naming a Provost, who shall be a Certified Public Accountant licensed by the Commonwealth of Kentucky, to be in charge of Directors' elections. The Provost shall have responsibilities and duties regarding nominating petitions as well as votes and the counting of votes.

SECTION 4.07. Duties of Provost Regarding Nominations. The duties of the Provost regarding nominating petitions shall be as follows:

(a) The Provost of the election shall examine and audit the petition or petitions filed by the candidates for election to the office of Director to determine if the petition or petitions comply with the requirements of the Kentucky Revised Statutes, the Articles of Incorporation and these Bylaws.

(b) The Provost is granted the power and authority to pass upon and determine the validity of each of the signatures and addresses on the petition or petitions to determine if those signing are qualified members in good standing of the Cooperative and entitled to vote for the election of Directors.

(c) If the Provost shall disapprove a signature and/or address on a petition or petitions, he shall list same in writing giving the reason or reasons why said signature and/or address was not approved.

(d) The Provost shall determine if the required number of qualified voting members have signed the petition or petitions after having deducted from the petition or petitions the names disapproved by him because the name and/or addresses on said petition or petitions fail to comply with the Kentucky Revised Statutes, the Articles of Incorporation of the Cooperative or these Bylaws. If the petition or petitions do not contain the signatures and addresses of the required number, then the Provost shall not certify to the Secretary the name or names of the candidates on said petition or petitions to be placed upon the official ballot for the district.

Upon the completion of the examination and audit of the petition or petitions by the Provost, he shall certify to the Secretary of the Cooperative the name or names of those persons properly nominated by petition or petitions so that those so nominated may be listed on the official ballot for the district.

SECTION 4.08. Preparation of Official Ballot. After the Provost has certified the names of the candidates nominated by petition or petitions to be placed upon the official ballot, it shall be the duty of the Secretary to prepare a printed ballot of those persons duly nominated either by the Committee on Nominations or by nominating petition within four (4) days after the nominating petitions are required to be posted. The printed ballot shall list separately the person nominated by the Nominating Committee and those persons nominated by petition in al-

phabetical order and labeled in such a manner as to note which candidate appears on the ballot by nomination of the Committee on Nominations and which appears on the ballot by nomination by petition. It shall be the further duty of the Secretary to see that the official ballots are mailed to each active and qualified member at his or her address shown on the Cooperative records for those districts which are up for election not later than fifteen (15) days prior to said Annual Meeting at which the results of said election are to be announced. A cut-off day of ninety (90) days shall be used in determining whether a member is in good standing and is qualified to vote in said election.

The official ballot shall be inscribed with instructions by the Secretary of the Cooperative that all official ballots must be returned only by U.S. mail and received by the Provost of the Cooperative or his designee not less than five (5) days prior to said Annual Meeting.

SECTION 4.09. Voting by District — Cumulative Voting Prohibited. A member shall be entitled to vote only in the director election for the district where he resides. A member who does not reside within a district shall be eligible to vote in a district where he receives service. In the event a member receives service in more than one district, he shall select a voting district. Once a non-resident member selects a voting district, he shall be prohibited from changing his voting district unless his service is terminated in that district and in which event he shall then select another voting district.

No cumulative voting shall be permitted.

SECTION 4.10. Official Ballots. Each official ballot for each district shall be placed with an envelope labeled Ballot Envelope within a Return Envelope bearing postage prepaid, addressed to the Secretary of the Cooperative or his designee all in a Cover Envelope, all of which shall be mailed by the Provost of the Cooperative to each member eligible to vote in the district.

SECTION 4.11. Execution of Ballot. The official ballot shall be marked by the eligible member then placed in the Ballot Envelope and sealed. The sealed Ballot Envelope, with the official ballot enclosed, shall then be placed in the Return Envelope which is addressed to the Provost with postage prepaid. The Return Envelope shall then be signed and dated by the member in the space provided on the Return Envelope so it can be determined by the Provost whether the person signing and dating the Return Envelope is an eligible voting member of the Cooperative and the district. The member shall then mail the Return Envelope to the Provost of the Cooperative.

The Return Envelope shall be deposited in a locked ballot box or boxes at the Winchester Post Office to remain at said Post Office until called for by the Provost.

SECTION 4.12. Elections. The Provost named by the Board of Directors in charge of Directors' elections, shall count the ballots as expeditiously as may be possible following the placement in his hands of said ballots. During the counting of the ballots no other persons other than personnel of the Cooperative directly engaged in the election or person nominated for Director or one representative for such persons properly authorized by the nominee may be present in the counting room. After the ballots have been duly counted the result of such elections shall be announced at the subsequent Annual Meeting of Members and the person receiving the highest number of votes in the district shall be declared elected and duly sworn by the Cooperative Attorney. The following shall not be counted:

- (1) A vote marked for more than one candidate;
- (2) Ballots other than the official ballot;
- (3) Ballots not received through the United States mail;
- (4) Ballots arriving late.

SECTION 4.13. Counting of Votes by Provost. The duties of the Provost regarding votes and counting shall be as follows:

- (1) After the opening of the post office for business on the fifth day prior to the Annual Meeting of the members, but in no event later than 9:00 a.m. on the morning of the fourth day prior to the Annual Meeting of the members, the Provost shall remove the United States Post Office at Winchester, Kentucky, the locked ballot box or boxes containing the Return Envelopes and transfer the locked ballot box or boxes to the Headquarters Building of the Cooperative.
- (2) The Provost shall unlock the box or boxes obtained at the Post Office which contain the Return Envelopes and examine each Return Envelope to ascertain if it has been properly signed, dated, mailed and received by the Cooperative at its Post Office Box at least five (5) days before the day of the Annual Meeting.
- (3) Any and all Return Envelopes found by the Provost not to conform to the provisions and requirements of these Bylaws shall not be opened but shall be immediately placed in a locked ballot box or boxes which locked ballot box or boxes shall be retained by the Provost in safekeeping until sixty (60) days after the date of the completion of the counting of the ballots.
- (4) When the unopened Return Envelope is found by the Provost to be in conformity of the provisions and requirements of the Bylaws, the Provost shall see that the membership records are marked so as to indicate the member has voted. The Return Envelopes that are found to be in conformity with provisions and requirements of these Bylaws shall then be placed in a locked ballot box for the accepted Return Envelopes.

In the event another unopened Return Envelope is found by the Provost to be from the same voting member, the Provost shall then remove the unopened Return Envelope theretofore approved from the approved Return Envelopes and attach to it the second unopened Return Envelope and note on the back of the unopened Return Envelopes the reason for rejection and then place both of the unopened Return Envelopes in the locked ballot box provided for any and all unopened Return Envelopes found by the Provost not to conform to the provisions and the requirements of the Bylaws.

- (5) After all of the Return Envelopes have been checked by the Provost for approval or rejection and placed either in the locked ballot box or boxes for accepted Return Envelopes, the Provost shall open the accepted Return Envelopes and remove the Ballot Envelope unopened therefrom and place same in a locked Ballot Box until all of said Return Envelopes have been opened. The Provost shall then open the locked ballot box or boxes containing the unopened official Ballot Envelopes and remove the same from said ballot box or boxes and open each official Ballot Envelope and tabulate all valid votes cast on each official ballot.
- (6) Any official ballot which is deemed invalid by the Provost for reasons set forth in these Bylaws shall be placed by the Provost in the locked ballot box or boxes containing the Return Envelopes.
- (7) The ballot box or boxes shall be kept locked at all times except when the Provost is present.
- (8) If the counting of the official ballots has not been completed at the time of adjournment of the counting, all official ballots unopened and uncounted shall be kept in the locked ballot box or boxes by the Provost until the counting of all official ballots is again begun in the presence of the Provost and this procedure shall continue until all valid official ballots have been counted and tabulated.
- (9) The Provost shall place all official and valid ballots which have been counted in a locked ballot box and shall retain same unopened in safe-keeping for sixty (60) days from the date of completion of the official counting and tabulating by him.

SECTION 4.14. Certification of Election by Provost. The Provost shall promptly, upon completion of the counting of the membership votes, certify in writing to the Secretary of the Board the names of the candidates and the number of votes received by each and shall also certify the name of the person having been elected as Director of each district.

SECTION 4.15. Procedure for Destroyed Ballot. In the event a voting member in good standing has his, her or its ballot inadvertently destroyed or the Return Envelope inadvertently destroyed, or the Cover Envelope with the covered contents therein was not received by the voting member, then upon the voting member having exhibited to the Provost his driver's license or a Social Security card, the Provost shall check the Cooperative's membership list to determine if he, she or it is a voting member in good standing. The Provost shall then cause the voting member to execute an Affidavit before a Notary Public at the office of the Provost, and if the Provost approves, he may then and there only deliver to the voting member a Return Envelope, a Ballot Envelope and a ballot. However, no Affidavit, Return Envelope, Ballot Envelope or ballot shall be delivered by the Provost after 5:00 o'clock, p.m., on the sixth day prior to the Annual Meeting.

SECTION 4.16. Custody of Keys to Ballot Boxes. The Provost shall be responsible for the custody of the keys to all ballot boxes.

SECTION 4.17. Write-In Votes Prohibited. No write-in votes shall be permitted in the election of Directors.

SECTION 4.18. Election of Unopposed Candidates. Should the Committee on Nominations select a candidate to run for office of Director from a district and should no candidate be nominated from the membership of the district by written or printed petition within the prescribed time as set forth in Article IV, Section 4.05 of these Bylaws, then the Provost appointed by the Board of Directors pursuant to Article IV, Section 4.06 of these Bylaws shall certify to the Secretary of the Board that no petition has been filed within the prescribed time and that the candidate nominated by the Committee on Nomination elected by the Board for that district is therefore officially elected without opposition and it will be so announced at the Annual Membership Meeting and the nominee shall be deemed elected to the Board for that district without the necessity of mailing official ballots through the United States mail and following the election procedures set forth in these Bylaws.

SECTION 4.19. Requesting Recount and Contesting Election of Directors. A candidate for election as director may within thirty (30) days of the announcement of the election result request the Provost to recount the votes cast in his election. A person requesting a recount shall post a bond with the Provost in an amount to be determined by the Provost to equal the estimated cost of the recount. In the event the recount changes the election of a director, then the cost thereof shall be paid by the Co-op. However, in the event the recount does not change the election of the director, the cost of the recount shall be paid by the candidate requesting same and shall be secured by the bond.

Any action to contest the election results of a director as certified by the Provost shall be filed in the Clark Circuit Court not later than the 30th day follow-

ing the Annual Meeting at which the election results were announced.

SECTION 4.20. Removal of Directors by Members. Any member(s) may bring one or more charges for cause, which if proven would legally justify the removal of a director against any one or more directors and may request the removal of such director(s) by reason thereof by filing with the Secretary such charge(s) in writing signed by said member(s), together with a petition signed by not less than twenty (20%) percent of the then-total members of the Cooperative, which petition calls for a special member meeting the stated purpose of which shall be to hear and act upon such charge(s), and which specifies the place, time and date thereof not sooner than twenty-five (25) days after the filing of such petition. Each page of the petition shall, in the forepart thereof, state the name(s) and address(es) of the member(s) filing such charge(s), a verbatim statement(s) is (are) being made. The petition shall be signed by each member in the same name as appears on the membership records and shall state the signatory's address as the same appears on the membership records. A statement of such charge(s) verbatim, the name(s) of director(s) against whom the charge(s) have been made, of the member(s) filing the charge(s) and the purpose of the meeting shall be contained in the notice of the meeting; PROVIDED, that the notice shall set forth (in alphabetical order) only fifty (50) of the names of the members filing one or more charges if fifty (50) or more members file the same charge(s) against the same director(s). Such director(s) shall be informed in writing of the charge(s) after they have been validly filed and at least twenty (20) days prior to the meeting of the members at which the charge(s) are to be considered, and shall have an opportunity at the meeting to be heard in person, by witnesses, by counsel or any combination of such, and to present evidence in respect to the charge(s); and the person(s) bringing the charge(s) shall have the same opportunity, but must be heard first. The question of the removal of such director(s) shall, separately for each if more than one has been charged, be considered and voted upon at such meeting; PROVIDED, that the question of the removal of a director shall not be voted upon at all unless some evidence in support of the charge(s) against him shall have been presented during the meeting through oral statements, documents or otherwise, with the ruling concerning same to be made by the chairman of the special meeting. The chairman of the said meeting shall be a licensed attorney appointed by the attorney to the Board, and the Cooperative shall compensate him for his services.

SECTION 4.21. Removal of Directors for Absence. Any Board member who is absent from three consecutive regular meetings of the Board, unless excused by the affirmative vote of majority of the other Board members, shall be deemed to have vacated his office. After declaring the vacancy to exist, the remaining Board members shall proceed to fill the vacancy.

SECTION 4.22. Vacancies. All vacancies occurring in the Board of Directors shall be filled by a majority vote of the Board of Directors. A director thus elected shall serve out the unexpired term of the director whose office was originally vacated and until a successor is elected and qualified.

SECTION 4.23. Compensation; Expenses. Directors shall receive reasonable compensation and benefits for their services which shall be determined from time to time by resolution of the Board of Directors. Also directors shall receive advancement or reimbursement of any travel and out-of-pocket expenses actually, necessarily and reasonably incurred in performing their duties. No director shall receive compensation for serving the Cooperative in any other capacity, unless the employment of such director is temporary and shall be specifically authorized by a vote of the Board upon their resolved determination that such was an emergency measure; PROVIDED, that a director who is also an officer of the Board, and who as such officer performs regular or periodic duties of a substantial nature for the Cooperative in its fiscal affairs, may be compensated in such amount as shall be fixed and authorized in advance of such service by the Board of Directors.

SECTION 4.24. Reports to Members. The Board of Directors shall cause to be established and maintained a complete accounting system of the Cooperative's financial operations and conditions, and shall, after the close of each fiscal year, cause to be made a full, complete and independent audit of the cooperative's accounts, books and records reflecting financial operations during, and financial condition as of the end of, such year. The board may authorize special audits, complete or partial, at any time and for any specified period of time. A full and accurate summary of such audits reports shall be published in *Kentucky Living* or presented to the members at the succeeding annual meeting of the members. *Kentucky Living* is the official notification medium of Clark Energy Cooperative. The cost of a subscription to *Kentucky Living* and/or *Current News* is included as part of the cost of the electric service.

ARTICLE V MEETINGS OF DIRECTORS

SECTION 5.01. Regular Meetings. A regular meeting of the Board of Directors shall be held, without notice, immediately after the adjournment of the annual meeting of the members, or as soon thereafter as conveniently may be.

Other regular meetings of the Board of Directors shall be held at such date, time and place as the Board shall designate. The President shall give each member of the Board at least five (5) days written notice of each regular meeting of the Board of Directors.

SECTION 5.02. Special Meetings. A special meeting of the Board of Directors may be called by the Board of Directors, by the President or by any five (5) directors, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided in Section 5.03. The Board, the President, or the directors calling the meeting shall fix the date, time and place for the meeting. Special meetings, upon proper notice as otherwise provided in Section 5.03, may also be held via telephone conference call, without regard to the actual location of the directors at the time of such telephone conference meeting, if all the directors consent thereto.

SECTION 5.03. Notice of Directors Meetings. Written notice of the date, time, place (or telephone conference call) and purpose or purposes of any special meeting of the Board and, when the business to be transacted thereat shall require such, of any regular meeting of the Board, shall be delivered to each director not less than five (5) days prior thereto, either personally or by mail, by or at the direction of the Secretary or, upon a default in this duty by the Secretary, by him or those calling it in the case of a special meeting or by any director in the case of a meeting which date, time and place have already been fixed by Board resolution. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the director at his address as it appears on the records of the Cooperative, with first-class postage thereon prepaid, mailed at least five (5) days prior to the meeting date. The attendance of a director at any meeting of the Board shall constitute a waiver of notice of such meeting unless such attendance shall be for the express purpose of objecting to the transaction of any business, or of one or more items of business, on the ground that the meeting shall not have been lawfully called or convened.

SECTION 5.04. Quorum. The presence in person of a majority of the directors in office shall be required for the transaction of business and the affirmative votes of a majority of the directors present and voting shall be required for any action to be taken, unless otherwise provided by statute or these Bylaws; PROVIDED, that a director who by law or these Bylaws is disqualified from voting on a particular matter shall not, with respect to consideration of and action upon that matter, be counted in determining the number of directors in office or present; AND PROVIDED FURTHER, that, if less than a quorum be present at a meeting, a majority of the directors present may adjourn the meeting from time to time, but shall cause the absent directors to be duly and timely notified of the date, time and place of such adjourned meeting.

ARTICLE VI OFFICERS; MISCELLANEOUS

SECTION 6.01. Number and Title. The officers of the Cooperative shall be a President and CEO, Chairman of the Board, Vice Chairman, Secretary and Treasurer, and such other officers as may from time to time be determined by the Board of Directors. The offices of Secretary and Treasurer may be held by the same person.

SECTION 6.02. Election and Term of Office. The officers named in Section 6.01 shall be elected annually and without prior nomination, by the Board of Directors at the first meeting of the Board held after the annual meeting of the members. If the election of such officers shall not be held at such meeting, it shall be held as soon thereafter as conveniently may be. Each such officer shall hold office until the meeting of the Board first held after the next succeeding annual meeting of the members or until his successor shall have been duly elected and shall have qualified, subject to the provisions of the Bylaws with respect to the removal of directors and to the removal of officers by the Board of Directors. Any other officers may be elected by the Board from among such persons, and with such title, tenure, responsibilities and authorities, as the Board of Directors may from time to time deem advisable.

SECTION 6.03. Removal. Any officer, agent or employee elected or appointed by the Board of Directors may be removed by the Board whenever in its judgment the best interests of the Cooperative will thereby be served.

SECTION 6.04. Vacancies. A vacancy in any office elected or appointed by the Board of Directors shall be filled by the Board for the unexpired portion of the term.

SECTION 6.05. Oath of Directors. The attorney to the Board shall administer the following oath to the officers and directors upon their appointment of election to which they must affirmatively respond:

"Do you solemnly swear or affirm that you will support the Constitution of the United States and the Constitution of the Commonwealth and that you will faithfully execute to the best of your ability the Office of Director of Clark Energy Cooperative according to law and do you further solemnly swear or affirm that since the adoption of the present Constitution you being a citizen of this state have not fought a duel

with deadly weapons within this state nor without of it nor have sent or accepted the challenge to fight a duel with deadly weapons nor have acted as a second in carrying a challenge or aided or assisted any person thus offending so help you God."

SECTION 6.06. Chairman of the Board. The Chairman of the Board of Directors shall —

- (a) Preside at all meetings of the Board of Directors, and, unless determined otherwise by the Board of Directors, at all meetings of the members except that the Chairman of the Board may appoint the attorney to the Board or some other person to preside at the meetings of members;
- (b) affix or have his signature affixed, with the Secretary, on certificates of membership, and sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board of Directors to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed, and
- (c) in general, perform all duties incident to the office of Chairman of the Board and such other duties as may be presented by the Board of Directors from time to time.

SECTION 6.07. Vice Chairman. In the absence of the Chairman, or in the event of his inability or refusal to act, the Vice Chairman shall perform the duties of Chairman, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman; and shall perform such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 6.08. Secretary. The Secretary shall —

- (a) keep, or cause to be kept, the minutes of meetings of the members and of the Board of Directors in one or more books provided for that purpose;
- (b) see that all notices are duly given in accordance with these bylaws or as required by law;
- (c) be custodian of the corporate records and of the seal of the Cooperative and to affix the seal to all documents the execution of which, on behalf of the Cooperative, is duly authorized in accordance with the provisions of these Bylaws or is required by law;
- (d) keep, or cause to be kept, a register of the name and post office address of each member, which address shall be furnished to the Cooperative by such member;
- (e) affix or cause to be affixed with the Chairman, his signature to certificates of membership;
- (f) have general charge of the books of the Cooperative in which a record of the members is kept;
- (g) keep on file at all times a complete copy of the Cooperative's Articles of Incorporation and current Bylaws, which copies shall always be open to the inspection of any member at reasonable times, and, at the expense of the Cooperative, furnish a copy of such documents upon request to any member, and
- (h) in general, perform all duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 6.09. Treasurer. The Treasurer shall —

- (a) have charge and custody of and be responsible for all funds and securities of the Cooperative;
- (b) receive and give receipts for monies due and payable to the Cooperative from any source whatsoever, and deposit or invest all such monies in the name of the Cooperative in such bank or banks or in such financial institutions or securities as shall be selected in accordance with the provisions of these Bylaws, and
- (c) in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 6.10. Delegation of Secretary's and Treasurer's Responsibilities. Notwithstanding the duties, responsibilities and authorities of the Secretary and of the Treasurer hereinbefore provided in Sections 6.08 and 6.09, the Board of Directors may, except as otherwise limited by law, delegate, wholly or in part, the responsibility and authority for, and the regular or routine administration of, one or more of each such officer's such duties to one or more agents, other officers or employees of the Cooperative who are not directors. To the extent that the Board does so delegate with respect to any such officer, that officer as such shall be released from such duties, responsibilities and authorities.

SECTION 6.11. President and CEO. The Board of Directors may appoint a President & CEO, who may be, but who shall not be required to be, a member of the Cooperative and who also may be designated President. Such officer shall perform such duties as the Board of Directors may from time to time require and shall have such authority as the Board of Directors from time to time

vest in him.

SECTION 6.12. Bonds. The Board of Directors may require the Treasurer and any other officer, agent or employee of the Cooperative charged with responsibility for the custody of any of its funds or property to give bond in such sum and with such surety as the Board of Directors shall determine. The Board of Directors in its discretion may also require any other officer, agent or employee of the Cooperative to give bond in such amount and with such surety as it shall determine. The costs of all such bonds shall be borne by the Cooperative.

SECTION 6.13. Indemnification of Officers, Directors, Employees and Agents. The Cooperative shall indemnify any person who is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by, or in the right of, the Cooperative) by reason of the fact that such person is or was a director, officer, employee or agent of the Cooperative, or who is or was serving at the request of the Cooperative as a director, officer, employee or agent of another cooperative, association, corporation, partnership, joint venture, trust or other enterprise, against expenses (including all costs of defense), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Cooperative, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself, create a presumption that the person failed to act in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Cooperative, and with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct of such person was unlawful.

The Cooperative shall indemnify any person who was or is a party, or is threatened to be made a party to, any threatened, pending or completed action or suit by, or in the right of, the Cooperative to procure a judgment in its favor by reason of the fact that such person is, or was a director, officer, employee or agent of the Cooperative, or is, or was, serving at the request of the Cooperative as a director, officer, employee or agent of another Cooperative, association, corporation, partnership, joint venture, trust or other enterprise, against expenses (including all costs of defense), actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to the best interests of the Cooperative, and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of the duty of such person to the Cooperative, unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity of such expenses as the Court shall deem proper.

To the extent that a director, officer, employee or agent of the Cooperative has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in paragraphs 1 and 2, in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Any indemnification under paragraphs 1 and 2 (unless ordered by a Court) shall be made by the Cooperative only as authorized in the specific case, upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstance because such person has met the applicable standard of conduct set forth in paragraphs 1 and 2. Such determination shall be made: a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or b) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or c) by the members.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Cooperative in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Cooperative as authorized in this Article.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of members or disinterested directors, statute or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Cooperative may purchase and maintain insurance on behalf of any per-

son who is or was a director, officer, employee or agent of the Cooperative, or who is or was serving at the request of the Cooperative as a director, officer, employee or agent of another cooperative, association, corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such persons and incurred by such person in any such capacity or arising out of the status of such person as such, whether or not the Cooperative would have the power to indemnify such person against such liability under the provisions of this Article.

SECTION 6.14. Reports. The officers of the Cooperative shall submit at each annual meeting of the members reports covering the business of the Cooperative for the previous fiscal year and showing the condition of the Cooperative at the close of each fiscal year.

ARTICLE VII NON-PROFIT ORGANIZATION

SECTION 7.01. Interest or Dividends on Capital Prohibited. The Cooperative shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its patrons. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its patrons.

SECTION 7.02. Patronage Capital in Connection with Furnishing Electric Energy. In the furnishing of electric energy the Cooperative's operations shall be so conducted that all patrons will, through their patronage, furnish capital for the Cooperative. In order to induce patronage and to assure that the Cooperative will operate on a non-profit basis, the Cooperative is obligated to account on a patronage basis to all its patrons for all amounts received and receivable from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against furnishing of electric energy. All such amounts in excess of operating costs and expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by the patrons as capital. The Cooperative is obligated to pay by credits to a capital account for each patron all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron.

All other amounts received by the Cooperative from its operations in excess of costs and expenses shall, insofar as permitted by law, be (a) used to off-set any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to its patrons on a patronage basis, and any amount so allocated shall be included as a part of the capital credited to the accounts of patrons, as herein provided.

In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members: PROVIDED, that insofar as gains may at that time be realized from the sale of any appreciated asset, such gains shall be distributed to all persons who were patrons during the period the asset was owned by the Cooperative in proportion to the amount of business done by such patrons during that period, insofar as is practicable, as determined by the Board of Directors before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired: PROVIDED, however, that the Board of Directors shall have the power to adopt rules providing for the separate retirement of that portion ("power supply or other service or supply portion") of capital credited to the accounts of patrons which corresponds to capital credited to the account of the Cooperative by an organization furnishing power supply or any other service or supply to the Cooperative. Such rules shall —

- (a) establish a method for determining the portion of such capital credited to each patron for each applicable fiscal year;
- (b) provide for separate identification on the Cooperative's books of such portions of capital credited to the Cooperative's patrons;
- (c) provide for appropriate notifications to patrons with respect to such portions of capital credited to their accounts, and
- (d) preclude a general retirement of such portions of capital credited to patrons for any fiscal year prior to the general retirement of other capital credited to patrons for the same year or of any capital credited to patrons for any prior fiscal year.

Capital credited to the account of each patron shall be assignable only on the books of the Cooperative pursuant to written instructions from the assignor and only to successors in interest or successors in occupancy in all or a part of such patron's premises served by the Cooperative, unless the Board of Directors, acting under policies of general application, shall determine otherwise.

Notwithstanding any other provisions of these Bylaws, the Board of Directors shall at its discretion have the power at any time upon the death of any

patron who was a natural person (or, if as so provided for in the preceding paragraph, upon the death of an assignee of the capital credits of a patron, which assignee was a natural person), if the legal representatives of his estate shall request in writing that the capital so credited or assigned, as the case may be retired prior to the time such capital would otherwise be retired under the provisions of the Bylaws, to retire such capital immediately upon such terms and conditions as the Board of Directors, acting under policies of general application to situations of like kind, and such legal representatives, shall agree upon: PROVIDED, however, that the financial conditions of the Cooperative will not be impaired thereby.

The Cooperative, before retiring any capital credited to any patron's account, shall deduct therefrom any amount owing by such patron to the Cooperative, together with interest thereon at the Kentucky legal rate on judgments in effect when such amounts became overdue, compounded annually.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this Article of the Bylaws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's offices.

SECTION 7.03. Patronage Refunds in Connection with Furnishing Other Services. In the event that the Cooperative should engage in the business of furnishing goods or services other than electric energy, all amounts received and receivable therefrom which are in excess of costs and expenses properly chargeable against the furnishing of such goods or services shall, insofar as permitted by law, be prorated annually on a patronage basis and returned to those patrons from whom such amounts were obtained at such time and in such order or priority as the Board of Directors shall determine.

ARTICLE VIII

DISPOSITION AND PLEDGING OF PROPERTY: DISTRIBUTION OF SURPLUS ASSETS ON DISSOLUTION

SECTION 8.01. Disposition and Pledging of Property. Not inconsistently with Kentucky Revised Statutes, Section 279.140 paragraph 2 thereof, the Cooperative may authorize the sale, lease, lease-sale, exchange, transfer or other disposition of any of the Cooperative's properties and assets only upon the affirmative votes of a majority of the then-total members of the Cooperative at a duly held meeting of the members. However, the Board of Directors shall have full power and authority:

- (a) to borrow monies from any source and in such amounts as the Board may from time to time determine;
- (b) to mortgage or otherwise pledge or encumber any or all of the Cooperative's properties or assets as security therefor, and
- (c) to lease, lease-sell, exchange, transfer or otherwise dispose of services and electric energy, property acquired for resale, merchandise, property not necessary or useful for the operation of the Cooperative: PROVIDED, that sales of such unnecessary property shall not in any one year exceed ten (10) percent in value of all the property of the Cooperative other than merchandise and property acquired for resale.

Supplementary to the First sentence of paragraph 1, and any other applicable provisions of law or these Bylaws, no sale, lease, lease-sale, exchange, transfer or other disposition of any of the Cooperative's properties and assets shall be authorized except in conformity with the following:

- (1) If the Board of Directors looks with favor upon any proposal for such sale, lease, lease-sale, exchange, transfer or other disposition, it shall first cause three (3) independent, non-affiliated appraisers, expert in such matters, to render their individual opinions as to the value of the Cooperative with respect to such a sale, lease, lease-sale, exchange, transfer or other disposition and as to any other terms and conditions which should be considered. The three (3) such appraisers shall be designated by a Circuit Court Judge for the Judicial District in Kentucky in which the Cooperative's headquarters are located. If such judge refuses to make such designations, they shall be made by the Board of Directors.
- (2) If the Board of Directors, after receiving such appraisals (and other terms and conditions which are submitted, if any), determines that the proposal should be submitted for consideration by the members, it shall first give every other electric cooperative corporately sited and operating in Kentucky (which has not made such an offer for such sale, lease, lease-sale, exchange, transfer or other disposition) an opportunity to submit competing proposals. Such opportunity shall be in the form of a written notice to such electric cooperative, which notice shall be attached to a copy of the proposal which the Cooperative has already received and copies of the respective reports of the three (3) appraisers. Such electric cooperative shall be given not less than thirty (30) days during which to submit competing proposals, and the actual minimum period within which proposals are to be submitted shall be stated in the written notice given to them.
- (3) If the Board then determines that favorable consideration should be

given to the initial or any subsequent proposal which has been submitted to it, it shall adopt a resolution recommending the sale and directing the submission of the proposal to a vote of the members at a duly held member meeting, and shall call a special meeting of the members for consideration thereof and action thereon, which meeting shall be held not sooner than ninety (90) days after the giving of such notice to the members: PROVIDED, that consideration and action by the members may be given at the next annual member meeting if the Board so determines and if such annual meeting is held not sooner than ninety (90) days after the giving of such notice.

- (4) Any two hundred (200) or more members, by so petitioning the Board not less than twenty (20) days prior to the date of such special or annual meeting, may cause the Cooperative, with the cost to be borne by the Cooperative, to mail to all members any opposing or alternative positions which they may have to the proposals that have been submitted or any recommendations that the Board has made.

The provisions of this Section 8.01 shall not apply to a sale, lease, lease-sale, exchange, transfer or other disposition to one or more other electric cooperatives or if the substantive or actual legal effort thereof is to merge or consolidate with such other one or more electric cooperatives.

SECTION 8.02. Distribution of Surplus Assets on Dissolution. Upon the Cooperative's dissolution, any assets remaining after all liabilities or obligations of the Cooperative have been satisfied and discharged shall, to the extent practicable as determined by the Board of Directors, not inconsistently with the provisions of the third paragraph of Section 7.02 of these Bylaws, be distributed without priority but on a patronage basis among all persons who are members of the Cooperative: PROVIDED, HOWEVER, that, if in the judgment of the Board the amount of such surplus is too small to justify the expense of making such distribution, the Board may, in lieu thereof, donate, or provide for the donation of, such surplus to one or more nonprofit charitable or educational organizations that are exempt from Federal income taxation.

ARTICLE IX SEAL

The Corporate Seal of the Cooperative shall be in the form of a circle and shall have inscribed thereon the name of the Cooperative and the words "Corporate Seal, Kentucky."

ARTICLE X FINANCIAL TRANSACTIONS

Section 10.01. Contracts. Except as otherwise provided by law or these Bylaws, the Board of Directors may authorize any Cooperative officer, agent or employee to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

Section 10.02. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness, issued in the name of the Cooperative, shall be signed or countersigned by such officer, agent or employee of the Cooperative and in such manner as shall from time to time be determined by the Board of Directors.

Section 10.03. Deposits, Investments. All funds of the Cooperative shall be deposited or invested from time to time to the credit of the Cooperative in such bank or banks or in such financial securities or institutions as the Board of Directors may select.

Section 10.04. Fiscal Year. The Cooperative's fiscal year shall begin on the first day of the month of May of each year and end on the 30th day of the month of April following.

ARTICLE XI WAIVER OF NOTICE

Any member or director may waive, in writing, any notice of meetings required to be given by these Bylaws.

ARTICLE XII AMENDMENTS

These Bylaws may be altered, amended or repealed by the Board of Directors any regular or special Board meeting: PROVIDED, that the notice of the meeting, shall have contained a copy of the proposed alteration, amendment or repeal or an accurate summary explanation thereof.

ARTICLE XIII RULES OF ORDER

Parliamentary procedure at all meetings of the members, of the Board of Directors, of any committee provided for in these Bylaws and of any other committee of the members or Board of Directors which may from time to time be duly established shall be governed by the most recent edition of Robert's Rules of Order, except to the extent such procedure is otherwise determined by law or by the Cooperative's Articles of Incorporation or Bylaws.

Clark Energy Cooperative Monthly Rates

In order to keep our members informed, we are publishing the Clark Energy Cooperative monthly rates in effect as of this date.

SCHEDULE A & B (Commercial, Industrial, & Power Service)

Customer Charge	5.27
All kwh	.08057
More than 10 kw Demand	
Customer Charge	4.83
All kwh	.06176
Demand Charge:	
Over 10 kw of billing demand	\$5.40 per kw
Minimum Monthly Charge	
Single-Phase Service	5.27
Three-Phase Service	28.37

SCHEDULED: Time-of-Use Marketing Rate (ETS Heaters)

Energy:	
All kwh	.03653
Subject to off-peak usage as follows:	

Month	Hours Applicable — E.S.T.
October thru April	10:00 p.m. to 7:00 a.m. 12:00 Noon to 5:00 p.m.
May thru September	10:00 p.m. to 10:00 a.m.

SCHEDULE E: Public Facilities

Customer Charge	5.40
All kwh	.06786

SCHEDULE G: General Power Service

*1 *2 Industrial Time-of-Day

Available to all commercial and industrial consumers for general power requirements with kilowatt (kw) demands of 1,000 kw or greater but less than 5,000 kw.

Demand Charge	\$7.82
Energy Charge:	
All kwh	.03966

SCHEDULE H: General Power Service

*1 *2 Industrial Time-of-Day

Available to all commercial and industrial consumers for general power requirements with kilowatt (kw) demands of 50kw or greater and less than 2,500kw.

Rates	
Demand Charge	\$7.82 per kw per month
Energy Charge	.03669 per kwh per month

SCHEDULE J: Industrial High Load Factor

Industrial Time-of-Day

Available to all commercial and industrial consumers for general power requirements with kilowatt (kw) demands of 1,000 kw or greater but less than 5,000kw.

Rates	
Demand Charge	\$5.80 per kw
Energy Charge all kwh per month	.02862

Schedule L: General Power Service

*1

Demand Charge:	
First 50 kw or less of billing demand	\$270.00
Over 50 kw of billing demand	\$5.40 per kw
Energy Charge:	
All kwh	.04390

Schedule M. General Power Service

*1 *2 Industrial Time-of-Day

Available to all commercial and industrial consumers for general power requirements with kw demands of 1,000 kw or greater but less than 5,000 kw.

Rates	
Demand Charge:	\$8.23 per kw
Energy Charge:	
All kw	.03966

SCHEDULE P: General Power Service

*1 *2

Demand Charge	
First 500 kw or less of billing demand	\$2,700.00
Over 500 kw of billing demand	\$5.40 per kw
Energy Charge	
All kwh	.03576

SCHEDULE R: Residential

Customer Charge	5.35
All kwh	.06047

SCHEDULE S: Outdoor Lighting — Security Lights

175-Watt Mercury Vapor Lamp \$5.48 per month
(based on 70 kwh per month)

SCHEDULE T: Outdoor Lighting Facilities

Lamp Rating	Annual Rate per Lamp	Average Annual Energy Use per Lamp	Average Monthly Energy Use per Lamp
200 Watt	\$60.23 per year	800 kwh	67 kwh
300 Watt	\$76.32 per year	1,200 kwh	100 kwh
400 Watt	\$114.59 per year	1,848 kwh	154 kwh

*1 POWER FACTOR ADJUSTMENT

The consumer agrees to maintain unity power factors as nearly as practicable. Power factor may be measured at any time. Should such measurements indicate that the power factor at the time of this maximum demand is less than 90%, the demand for billing purpose shall be the demand indicated or recorded by the demand meter, multiplied by 90% and divided by the percent power factor.

* 2 DETERMINATION OF BILLING DEMAND

The billing demand charge shall be the maximum kilowatt demand established by the consumer for any fifteen (15) minutes interval (adjusted for power factor) in the following listed hours for each month:

Month	Hours Applicable for Demand Billing — EST
October thru April	7:00 a.m. to 12:00 Noon 5:00 p.m. to 10:00 p.m.
May thru September	10:00 a.m. to 10:00 p.m.

Demand outside the above hours will be disregarded for billing purpose.

NOTE: All monthly kilowatt-hour usage shall be subject to plus or minus an adjustment per kwh determined in accordance with the "Fuel Adjustment Clause." The above rates are published for information purposes only. If additional facts are needed, please contact Clark Energy Cooperative Headquarters office.



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

April 28, 2000

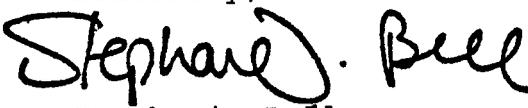
Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P. O. Box 748
2640 Ironworks Road
Winchester, KY. 40392 0748

Dimitri Vaughn Taylor
P. O. Box 4242
1220 Enterprise Drive
Winchester, KY. 40391

Honorable Patrick F. Nash
Counsel for Dimitri Taylor
112 North Upper Street
Lexington, KY. 40507

RE: Case No. 1999-513

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-513
)	
CLARK ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

O R D E R

Upon motion of both parties and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. The hearing previously scheduled for May 2, 2000 is cancelled.
2. The Commission reschedules the hearing for June 1, 2000 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, and the hearing shall continue until completed.
3. The Commission also extends for 30 days the relevant dates for completing discovery.

Done at Frankfort, Kentucky, this 28th day of April, 2000.

By the Commission

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
APR 21 2000
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

MOTION FOR EXTENSION OF TIME TO
FILE VERIFIED WITNESS TESTIMONY

Comes the complainant, Dimitri Vaughn Taylor, by counsel, and respectfully requests an extension of time to file his Verified Witness Testimony.

In support of this motion, complainant states that pursuant to the Commission's Order dated March 4, 2000, complainant served upon defendant 29 Interrogatories and 10 Requests for Production of Documents. As of the date of this motion, the undersigned has received no responses to the discovery requests.

Pursuant to the Commission's Order dated February 25, 2000, testimony of witnesses at the hearing is limited to what is contained in their pre-filed verified testimonies. The undersigned cannot prepare complete and relevant verified testimonies until he has received the requested discovery. Thus, the undersigned requests an extension such that the verified testimony of his witnesses can be filed one week after the undersigned's receipt of discovery responses.

Respectfully submitted,



PATRICK F. NASH
112 North Upper Street
Lexington, Kentucky 40507
(606) 254-3232

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 19 day of April, 2000 to:

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P O Box 748
Winchester, KY 40392



PATRICK F. NASH

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 99-513

RECEIVED
APR 21 2000
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

vs.

MOTION FOR EXTENSION OF TIME IN
WHICH TO ANSWER, TO SUBMIT DIRECT TESTIMONY,
AND FOR RESCHEDULING OF HEARING DATE

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

* * * * *

Comes now the defendant, Clark Energy Cooperative, Inc., and, after having contacted Patrick Nash, the attorney for the complainant, Dimitri Vaughn Taylor, and herein files this Motion for Extension of Time in which to answer the Interrogatories and Request for Production of Documents, the filing of the direct testimony of each witness expected to be called, and for rescheduling of the hearing. In support of said Motion, the defendant states as follows:

1. On or about April 7, 2000, the complainant's counsel sent Interrogatories and Request for Production of Documents to Overt L. Carroll, President of Clark Energy Cooperative, Inc. No Interrogatories or Request for Productions of Document were

forwarded to Robert L. Rose, Grant, Rose & Pumphrey, 51 South Main Street, Winchester, Kentucky 40391, attorney for defendant.

2. On or about April 12, 2000, Robert L. Rose was faxed copies of the Interrogatories by an employee of Clark Energy. Upon receipt of the Interrogatories, Robert L. Rose attempted to contact Shannon Messner, the appropriate person to provide answers to the Interrogatories and Request for Production of Documents. Mr. Rose was advised at that time that Mr. Messner had been hospitalized as a result of surgery he underwent at St. Joseph Hospital in Lexington, Kentucky. Mr. Rose was advised that Mr. Messner would be returning to the office on Monday, April 17, 2000.

3. On April 17, 2000, Mr. Messner was contacted and provided to Clark's attorney the information necessary to respond to said Interrogatories. Prior to the completion of said Interrogatories and execution of the verification by Shannon Messner, Shannon Messner was sent back to the hospital for additional tests and possible surgery regarding complications arising from his previous surgery. Mr. Messner's series of tests were to attempt to resolve a 95% blockage of his esophagus.

4. Upon receipt of the information concerning Mr. Messner's condition, the defendant contacted the Public Service Commission to request an extension and contacted Patrick Nash to request an extension. After speaking with Mr. Nash, the parties

have agreed as follows: Clark Energy shall have an additional ten (10) days from Wednesday, April 19, 2000, in which to answer the Interrogatories and Request for Production of Documents and file the direct testimony, and the complainant, by and through counsel, shall have an additional five (5) days after the receipt of the Answers to Interrogatories and Request for Production of Documents to file his direct testimony. As a result of the extension of time in which to answer, the parties respectfully request that the Public Service Commission reschedule the hearing originally set for May 2, 2000 to a time more appropriate to handle this matter.

Respectfully submitted,

GRANT, ROSE & PUMPHREY
51 South Main Street
Winchester, Kentucky 40391
Telephone: (606) 744-6828

By: _____

Robert L. Rose
Robert L. Rose

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion for Extension of Time in Which to Answer and for Rescheduling of Hearing Date has been served by mailing a true and correct copy of same to Patrick F. Nash, 112 North Upper Street, Lexington, Kentucky 40507, on this 19th day of April, 2000.

Robert L. Rose

Of Counsel for Defendant

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 99-513

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

vs.

ORDER

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

* * * * *

This matter having come before the Commission on the defendant's Motion for Extension of Time in Which to Answer and for Rescheduling of Hearing Date, the Commission having reviewed said Motion, having reviewed the record, and being otherwise sufficiently advised;

IT IS HEREBY ORDERED that the defendant, Clark Energy Cooperative, Inc., shall have an additional ten (10) days until May 1, 2000 in which to submit its Answers to Interrogatories and Request for Production of Documents. The complainant, Dimitri Vaughn Taylor, shall have five (5) days after receipt of the defendant's Answers to Interrogatories and Request for Production of Documents and defendant's direct testimony to file complainant's direct testimony, and the hearing previously scheduled for May 2, 2000 is hereby rescheduled for the _____ day of _____, 2000.

Done at Frankfort, Kentucky, this _____ day of April,

2000.

PUBLIC SERVICE COMMISSION

ATTEST:

EXECUTIVE DIRECTOR



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

March 14, 2000

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P. O. Box 748
2640 Ironworks Road
Winchester, KY. 40392 0748

Dimitri Vaughn Taylor
P. O. Box 4242
1220 Enterprise Drive
Winchester, KY. 40391

Honorable Patrick F. Nash
Counsel for Dimitri Taylor
112 North Upper Street
Lexington, KY. 40507

RE: Case No. 1999-513

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

4 7.50
67.50
5.50
73.00

3. On or before April 19, 2000, each party shall file with the Commission in verified form the direct testimony of each witness that it expects to call at the formal hearing.

4. On or before April 26, 2000, each party shall file with the Commission in verified form the testimony of each rebuttal witness that it expects to call at the formal hearing.

5. All provisions of the Commission's Order of February 25, 2000 that do not conflict with this Order remain in effect.

Done at Frankfort, Kentucky, this 14th day of March, 2000.

By the Commission

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
MAR 6 2000
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

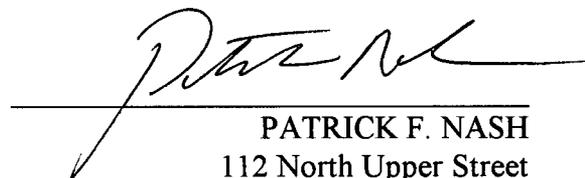
CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

ENTRY OF APPEARANCE

Comes Patrick F. Nash, the undersigned attorney, and hereby enters his appearance as the representative of complainant Dimitri Vaughn Taylor. *PFN*

Respectfully submitted,



PATRICK F. NASH
112 North Upper Street
Lexington, Kentucky 40507
(606) 254-3232

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 3 day of March, 2000 to:

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P O Box 748
Winchester, KY 40392



PATRICK F. NASH

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
MAR 6 2000
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR,

COMPLAINANT,

V.

CASE NO. 99-513

CLARK ENERGY COOPERATIVE, INC.,

DEFENDANT.

MOTION FOR CONTINUANCE

Comes the complainant, by counsel, and respectfully requests a 30 day continuance of all the scheduling deadlines set forth in the Order of February 25, 2000.

In support of this motion, the undersigned attorney states he is currently involved in a federal criminal trial in Covington, Kentucky that began on February 28, 2000 and is scheduled to end on March 10, 2000. Thereafter, the undersigned will be involved in a federal criminal trial in Lexington, Kentucky scheduled to begin March 13, 2000 and end on March 15, 2000. Because of these preexisting (and ongoing) trials, the undersigned is unable to prepare initial requests for production of documents on or before March 10, 2000 and, because of the inability to conduct discovery, would thereafter be unable to comply with the further deadlines set forth in the order. The undersigned respectfully requests that all deadlines be extended for 30 days.

Respectfully submitted,



PATRICK F. NASH

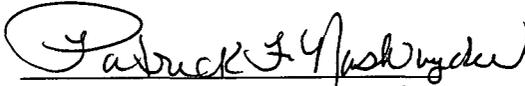
112 North Upper Street
Lexington, Kentucky 40507
(606) 254-3232

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing pleading was served by mail on this 3rd day of March, 2000 to:

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P O Box 748
Winchester, KY 40392


PATRICK F. NASH



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

February 25, 2000

Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.
P. O. Box 748
2640 Ironworks Road
Winchester, KY. 40392 0748

Dimitri Vaughn Taylor
P. O. Box 4242
1220 Enterprise Drive
Winchester, KY. 40391

RE: Case No. 1999-513

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,


Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-513
)	
CLARK ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

ORDER

Defendant having answered the complaint and the Commission finding that issues of fact are in dispute and that a procedural schedule should be established to ensure the prompt resolution of this matter, IT IS HEREBY ORDERED that:

1. A formal hearing in this matter shall be held on April 4, 2000 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, and continuing until completed.
2. Each party may, on or before March 10, 2000, serve upon any other party an initial request for production of documents and written interrogatories to be answered by the party served within 10 days of service.
3. On or before March 22, 2000 each party shall file with the Commission in verified form the direct testimony of each witness that it expects to call at the formal hearing.

4. On or before March 28, 2000, each party shall file with the Commission in verified form the testimony of each rebuttal witness that it expects to call at the formal hearing.

5. Direct examination of witnesses shall be limited to the authentication and adoption of that written testimony. No summarization of written testimony by the witness shall be permitted.

6. Witnesses who have filed written direct and rebuttal testimony shall present that testimony at the same sitting. Opposing parties may cross-examine such witnesses on both direct and rebuttal testimonies.

7. No opening statements shall be made at the hearing in this matter.

8. Any party may within 15 days of the filing of the hearing transcript with the Commission submit a written brief. Briefs shall not exceed 25 pages in length.

9. Copies of all documents served upon any party shall be served on all other parties and filed with the Commission.

10. Motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

11. To be timely filed with the Commission, a document must be received by the Secretary of the Commission within the specified time for filing except that any document shall be deemed timely filed if it has been transmitted by United States express mail, or by other recognized mail carriers, with the date the transmitting agency received said document from the sender noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

12. Service of any document or pleading shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

13. As the Complainant bears the burden of proof in this matter, his failure to appear at the formal hearing and to present proof in support of his complaint may result in the dismissal of his complaint with prejudice.

14. The failure of Defendant to appear at the formal hearing may result in the entry of an Order granting the Complainant's requested relief.

Done at Frankfort, Kentucky, this 25th day of February, 2000.

By the Commission

ATTEST:


Executive Director

CLARK ENERGY

COOPERATIVE

A Touchstone Energy™ Partner 

RECEIVED
JAN 28 2000
PUBLIC SERVICE
COMMISSION

January 28, 2000

Mr. Martin Huelsmann
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED
JAN 31 2000
PUBLIC SERVICE
COMMISSION

RE: Case No. 1999-513: Vaughn Taylor Complaint

Dear Mr. Huelsmann,

Enclosed is our attested response and supporting documentation for the above referenced complaint and case filed against Clark Energy. A copy of Clark's response and all supporting documentation has been forwarded to Mr. Taylor.

Please contact me if you have any questions or need additional information.

Sincerely,



Overt L. Carroll
President & CEO

Enclosure

Cc: Dimitri Vaughn Taylor
P.O. Box 4242
1220 Enterprise Drive
Winchester, KY 40391

line apparently came down the bluffs and cliff line overlooking the banks of the river. All parties agreed no access was available via the route of the old abandoned power line and that new construction would be required to extend service to Taylor's campsite. A new power line necessary to extend service was agreed to follow Taylor's planned road into the campsite area where he intended to build a cabin. The June 9th meeting ended at this point pending Taylor's development of his road and construction started on the cabin. A future meeting was agreed to be arranged after Taylor built his road. Clark personnel would then begin planning a new power line along the road per our tariffed policies and practices.

Follow-up phone conversations occurred July 2, 1997 and September 27, 1999 regarding Taylor's development of the road and campsite. Clark's records indicate a meeting was still pending July 2, 1997 with Taylor and his neighbors to discuss his plans for a road and our plans to build a power line along the road. Negotiations between Taylor and his neighbor for a road into the campsite apparently broke down after July 2, 1997 and Taylor again called September 27, 1999 about his plans at the campsite. He made a request that Clark use poles from the abandoned power line he described June 9, 1997 to be down and said he planned to obtain building permits from Clark County planning and zoning authorities. A copy of the job order recording Mr. Taylor's initial phone inquiry dated May 28, 1997 and brief notes of the other calls is enclosed. Shannon Messer, Clark's System Engineer, had previously spoken with Taylor on more than one occasion about his plans for a road into the campsite and our plans for a new power line along the road. Messer informed Taylor that Clark required reasonable access to the campsite for trucks and equipment needed for construction and subsequent operations and maintenance. Messer explained that Clark could build a power line given reasonable access, but we would not build a road needed for power line construction that Taylor would subsequently use for access to the campsite.

Mr. Messer's last series of phone conversations with Mr. Taylor and his father occurred during October 1999. Messer again discussed the issue of reasonable access needed for trucks and equipment. Taylor and his father described how there existed no access to the property other than by boat and of their plans to airlift building materials for a cabin and/or a mobile home to the campsite. Messer explained to Taylor and his father during these conversations that aside from reasonable access to the campsite, Taylor had to obtain the proper building permits from local planning and zoning authorities. He also explained health departments require approved septic or sewage permits before an electrical inspection can be issued. To date, Taylor has not developed a road into the campsite he said would be built, started cabin construction

or installed a mobile home, obtained a required zoning and/or building permit, obtained a required health department permit for an approved septic system or any electrical inspection.

Messer inspected the area of the abandoned power line after phone conversations with Taylor and his father in October 1999. Messer found remains of a power line constructed to the campsite many years ago for an old homestead on the Kentucky River near the Clark-Fayette County line. Only a hearth and chimney from the old homestead remains today. Portions of an old power line were apparently retired in-place nearly thirty years ago since no road access was then or is now available to trucks and equipment. Nature has reclaimed all of the original power line right-of-way except for the first 850 feet of old power line accessible by open field at the location of the nearest neighbor over one-half mile away. Clark's line personnel had no indication that an old power line was retired in-place since no conductor or poles were readily visible from the edge of the field. Messer confirmed that no access was available for trucks and equipment and that no part of the old abandoned power line was intact or could be used for electric service. He also determined that what little remained of the abandoned power line from the edge of the nearest neighbor's field down to the river represented a potential hazard to hikers and rock climbers. Contract labor was subsequently scheduled to remove all remaining remnants of the old line by hand since no access was available for equipment. Taylor recently filed a complaint with the Division of Water alleging Clark improperly disposed of abandoned materials. Enclosed is a copy of correspondence and supporting documentation to the Kentucky Division of Water satisfying their investigation.

The heart of Mr. Taylor's complaint against Clark is that we informed him new electric service would be extended to the campsite under any or all conditions and circumstances as a precondition to buying property. Specifically, Taylor alleges he relied on Clark's "ironclad" assurance of electric service prior to him making a commitment to purchase property and take possession of the deed. Courthouse records of this transaction, however, do not support Taylor's claim. Enclosed is a copy of Taylor's deed transaction that predates the enclosed copy of the job order recording Taylor's first phone inquiry. Clearly, Mr. Taylor purchased the property before he contacted Clark.

Another issue raised in Taylor's complaint is that Clark systematically raised the bar on requisites for electric service. Clark personnel informed Taylor about our need to build new electric service along his planned road to the campsite at the June 9, 1997 meeting. We informed Taylor of Clark's readiness to build a new power line for electric service per our tariffed policies and practices, but that Clark could not

reasonably satisfy a request for service without access under any circumstances. PSC administrative regulation 807 KAR 5:006, Section 14(c) clearly states a utility may refuse service when customers refuse or neglect to provide reasonable access to their premises for installation, operation and maintenance of utility facilities and meter reading. Our view is that installation, operation and maintenance of a power line and reading of a customer's meter is not reasonable if access is only by boat and no access is available for our trucks and equipment. Clark can build a new power line needed for electric service per tariffed policies and practices given reasonable access, but we cannot at the same time provide Taylor a road needed for line construction that he would subsequently use for access to the campsite. The enclosed photographs illustrate a few of the access problems presented by bluff and cliff areas originally traversed by old abandoned power line.

Similarly, PSC administrative regulation 807 KAR 5:006, Section 14(e) states that a utility may refuse service if customers do not comply with state and local codes and/or administrative regulations pertaining to electric service. As previously discussed, Taylor has yet to obtain all locally required building permits and health department permits for an approved sewage or septic system. A copy is enclosed of the July 30, 1999 notice from the Kentucky Department of Housing to all electrical inspectors and utilities outlining our requirements to meet the provisions of KRS 211.350, i.e. the "straight pipe law". Mr. Taylor may be able to obtain a permit from the Division of Water, but he is still required under the law to obtain all proper permits from state and/or local health departments. A permit from the health department approving his septic system is required before an electric inspection permit can be issued. Taylor has not constructed a residence or installed a mobile home because he has not satisfied all state and local requirements and not because Clark has failed to provide him electric service. All customers are required to obtain the necessary permits required by local and/or state authorities and satisfy all pertinent PSC administrative regulations prior to Clark extending electric service per our tariffed line extension policies and practices.

ATTEST:



Overt L. Carroll
President & CEO
Clark Energy Cooperative, Inc.

Name:

Taylor

Location:

Clay Ferry / Boonesboro River

County:

CL

5/28 Informed cons it would be Mon before the engs would be looking at the job - cons. to call and let us know what the schedule looks like for that day.

Consumer has started construction on house.

Meter base has been determined or will be determined during site survey. left message 5-30-97

Consumer plans on going OH or UG service.

Trailer is at location.

Septic is in.

Water is in.

Call consumer the following day between 8:00 - 8:30 a.m. to confirm appointment

Appointment scheduled for 6/9 @ 12:30.

Meet at ~~Riverview Marina will have to ride in boat to get to location.~~

meet @ Judy Ray Store

6/2 - Left msg for cons. to call the office.

7/1 - Left msg for cons. to call.

7/2 - Cons to call the ofc when he talks to his neighbor - then we can set up appt w/ eng to meet with both of them.



Date 5/28/97

Appointment 2/9 @ 6:30 Mon

Job Order No 44210

OIS Entry [Signature]

Member Data

Member Vaughn Taylor

Acct No _____

Mailing Po Box 4242
Winchester, Ky 40392

Location Between Clay Ferry & Boonesboro River

Owner Same

Phone No 229-7157 744-5544 shop

R/W Easement ok

Neighbors ? Mitchell Sidwell

Service Requested

House Temp. Service UD Service 100' Approx. Ft.

Mobile Home On Location Permits _____ Approx. Ft.

Barn New Existing _____ Approx. Ft.

Sec. Light Existing Pole Agreement

Entrance Change from _____ Amp to _____ Amp

Other Meter pole service was less
at one time. Scott has
talked to crew.

Taken By op Per coms 9/27/99 - Building on an existing foundation,
poles are still there. Should have building permit
in a couple of weeks.

Service Data

Membership Data

Elec. Heat _____ Kw

Member No _____

A/C _____ Volts

Old New Joint _____

Phase 100 Amps

Social Security No _____

Office Data

Engineer _____ Acct. 143 _____

WO No _____

Date _____ Acct. 252 _____

Code _____ Rate _____



BOOK 344

PAGE 118

THIS DEED made and entered into this 22 day of May, 1997, by and between John W. Stir, Jr., a single person of 18893 County Road #8, Gulf Shores, Alabama 36542, ("Grantor") and Dimitri Vaughn Taylor, a single person of 912 Wishbone Circle, Lexington, Fayette County, Kentucky 40502 ("Grantee").

WITNESSETH that for in consideration of the sum of Six Thousand Dollars (\$6,000.00), the receipt of which is hereby acknowledged, the Grantor has BARGAINED and SOLD and by these presents does hereby GRANT and CONVEY unto the Grantee, his heirs and assigns forever in fee simple, all that certain real property located in Clark County, Kentucky, and more particularly described as follows:

All that certain tract of land with improvements thereon lying and begin the County of Clark, State of Kentucky, and located about eight (8) miles southwest of Winchester on the north side of the Kentucky River at the Mouth of Jouett Creek, and more particularly described as follows:

Beginning at a point in the center of Jouett's Creek, said point bears N 33° 27' W 20.0 feet from 36-inch sycamore on the south bank of said Creek, a corner to Goebel Snowden and J.A. Stevens; thence with said Stevens down the center of Jouett's Creek as it meanders N 57° 55' E 17.0 feet; N 51° 00' E 75.0 feet; N 33° 33' E 165.8 feet; N 37° 41' E 49.0 feet; S 54°

WARRANTS GENERALLY the title to said property.

Provided, however, that there is excepted from the foregoing warranty and covenants the following:

1. The restrictive covenants of record in the Clark County Clerk's Office.
2. All conditions and/or restrictions, if any, affecting the property herein conveyed and contained on any plat of record in the aforesaid Clerk's Office.
3. Zoning and building restrictions, regulations, and ordinances, if any.
4. Easements and rights-of-way of whatsoever nature and kind reserved and recorded in the aforesaid Clerk's Office.
5. All ad valorem taxes assessed upon and against the above described real property for the current year 1997, and all subsequent taxes and assessments, all of which the Grantee assumes and agrees to pay .


 _____ GRANTOR

STATE OF ALABAMA

COUNTY OF Baldwin

The foregoing Deed was acknowledged before me this 31 day of March, 1997, by John W. Stir, a single person, the Grantor.

My Commission Expires: 3-31-97

John W. Stir

GRANTOR:

John W. Stir Jr.
JOHN W. STIR

GRANTEE:

Dmitri Vaughn Taylor
DMITRI VAUGHN TAYLOR

STATE OF Alabama

COUNTY OF Baldwin

The foregoing was subscribed and sworn to before me this 31st day of March 1997, by John W. Stir, the Grantor.

My commission expires: 3-31-97

Clare Cothran
NOTARY PUBLIC

STATE OF KENTUCKY



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF HOUSING,
BUILDINGS AND CONSTRUCTION

1047 U.S. HIGHWAY 127S. BAY 1
FRANKFORT, KENTUCKY 40601-4322
(502) 564-8044
FAX (502) 564-6799

PAUL E. PATTON
Governor

CHARLES A. COTTON
Commissioner

July 30, 1999

NOTICE

TO: Certified Electrical Inspectors and Utility Companies

FROM: Charles A. Cotton, Commissioner
Department of Housing, Buildings
And Construction

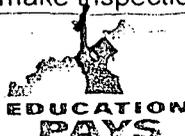
IN RE: Compliance with Senate Bill 18

As you know, KRS 211.350 ("the straight pipe bill") was enacted in 1998 to assure that adequate sewage treatment is provided before a building can be occupied. The legislation focused on the fact that utility companies required approval of wiring installations before electricity is supplied. If property owners need electricity, they will go to the health department to comply with sewage treatment laws.

Following up on the directive from the legislature, the administrative regulation governing the activities of certified electrical inspectors has been amended to conform with the intent of the law. Thus, the electrical inspectors are required to withhold formal approval of wiring installations in unsewered rural areas where there is no local building code inspection program until the health department has issued a notice of release on the septic tank application.

Under the regulation, as amended, the inspector will make inspections at the request of the electrical contractor and will place the green sticker on the equipment indicating that the wiring system has been inspected in accordance with the National Electrical Code. The placement of the green sticker will verify that the electrical contractor has satisfactorily completed his installation and compensation for his services should not be delayed. The inspector cannot formally or informally inform the utility that hook-up is appropriate until he can complete the department's certificate of compliance document, including on it the number of the health department's "notice of release".

A copy of the amended regulation is enclosed for your information. Each inspector will be held accountable for compliance with the regulation and failure to do so may result in suspension or revocation of the inspector's authority to make inspections.



Of course, the effectiveness of the law depends upon the utility company's adherence to the policy that, even if it is informed that a green sticker has been applied, it will not supply either temporary or permanent electrical service to any property unless and until the Certificate of Compliance document has been issued by the certified electrical inspection.

If you have any questions or comments, please do not hesitate to call the Department.

Enclosure



Image16.jpg



Image17.jpg



Image18.jpg



Image19.jpg



Image20.jpg



Image21.jpg



COOPERATIVE

A Touchstone Energy™ Partner 

January 14, 2000

Ms. Barbara Risk
Commonwealth of Kentucky
Division of Water
Frankfort Regional Office
643 Teton Trail
Frankfort, KY 40601

RE: Vaughn Taylor Complaint

Dear Ms. Risk,

Per your request, we have investigated the complaint against Clark Energy filed by Vaughn Taylor with the Division of Water and find no basis in fact supporting his allegations. Mr. Taylor owns a campsite on the banks of the Kentucky River near the Clark-Fayette County line. A power line was constructed to the campsite area many years ago to an old homestead. Only a hearth and chimney from the old homestead remains today. Remnants of an old power line were apparently retired in-place nearly thirty years ago since no road access was then or is now available to trucks and equipment. Nature has reclaimed all of the original power line right-of-way except for the first 850 feet of old power line accessible by open field at the location of the nearest neighbor over one-half mile away. Clark's line personnel had no indication that an old power line was retired in-place since no line conductor or poles were readily visible from the edge of the field.

Shannon Messer, Clark's System Engineer, inspected the area in October 1999. He determined that remnants of the old power line extending from the edge of the nearest neighbor's field down to the river represented a potential hazard to hikers and rock climbers. Contract labor was subsequently scheduled to remove all remaining remnants of the old line by hand since no access was available for equipment. Any old poles not already down were cut down and abandoned. None were abandoned in a flood plain. Old power line conductor readily accessible from the ground, pole hardware and a 1.5 kVA transformer were removed and checked into Clark's warehouse facilities late-October 1999. We believe conductor reported by Mr. Taylor was removed by another party from treetops and branches, not accessible to our contract crews, and abandoned at the campsite. We visited the campsite again on January 12, 2000 and removed the power line conductor reported by Mr. Taylor.

An old 1.5 kVA transformer is rarely found today. So, the transformer removed from the campsite area was indeed a unique unit to track among other units slated for proper disposal during the next scheduled shipment. This transformer was shipped for testing and proper disposal November 11, 1999. Enclosed is documentation illustrating when the transformer was shipped and test results showing the transformer did not represent an environmental concern. After your visit to our office January 13th, Mr. Messer received photographs taken by Clark's field personnel of the Taylor campsite after the reported line conductor was removed on January 12th. Enclosed are copies of the photographs illustrating that all line conductor has been removed from Mr. Taylor's campsite.

Please let me know if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Overt L. Carroll".

Overt L. Carroll
President & CEO

Enclosure

Location:

EPS Manifest Continuation Sheet

EPS Continuation Sheet No.

993115

Uniform Hazardous Waste Manifest No.

86360

Pick-Up Date:

11-11-99

Barcode Number	Serial Number	Mfg	KVA	Type	PCB (If known)	R.F.S. Date	Weight (Kg)	T/D P/C
368368	7956990	WE	5	Pole		11-7-99	91K	
368369	5114168	WE	3				62K	
368370	74AK13912	?	15				162K	
368371	133093	RTE	7.5				128K	
368372	351880	MFG	5				91K	
368373	E381541-61P	GE	5				91K	
368374	550502A	UUS	10				130K	
368375	5047846	WE	3				62K	
368376	58B12050	WE	7.5				128K	
368377	5424937	WE	3				62K	
368378	7831904	GE	1.5				15	
368379	15599752	WE	5				91K	
368380	5711-115	MFG	7.5				128K	
368381	8752735	GE	3				62K	

1332Kg

- Mfg. Allis Chalmers - AC
 Central Maloney - C
 Cooper - CO
 Dowzer Electric - D
 Erneo - E
 General Electric - GE
 Hevi-Duty - H
 HK Porter Delta Star - H
 Howard Industries - HO
 Ruhimma - R
 Ingersoll Rand - I
 MN - MN
 No Mfg. Listed - N
 PA - PA
 Pole Star - M
 RTE - RT
 Sang - SA
 Square D - SQ
 Standard Transformer - ST
 Uptegraft - UP
 Wagner - W
 Westinghouse - WE

- Type: 1- Polemount/SMT
 2- Padmount/Network/Mini
 3-Voltage Regulators
 4-Substation Transformers
 5-Capacitors
 6-Drums Oil/Tankers
 7-Gas Regulators/Tin Meters
 8-Mercury Regulators
 9-PT/CT
 10-Misc. (OS/OCB/Ballast/Bushing/etc)
 11-Soil/Debris

- 12-Empty Drums
 13-Subst. Class PT/CT
 14-Subst. Class OCB
 15-Subst. Class OS, Switchge
 16-Lead Cable/Cable
 17-Components of Substati
 Equipment

Signature of Customer:

Signature of Transporter:

CLARK ENERGY

MANIFEST NUMBER: 993115

PCB TEST RESULTS

BARCODE #	OIL TEST #	SAMPLE DATE	PPM LEVEL	RESULTS DATE	HW MANIFEST#	EPS MAN#	FURNACE
368340	36645	11/12/99	1	12/ 1/99	86360	993115	12/ 2/99
368402	36593	11/12/99	1	11/16/99	86360	993115	11/22/99
368401	36594	11/12/99	4	11/16/99	86360	993115	11/22/99
368410	36585	11/12/99	971	11/17/99	86360	993115	11/24/99
368355	36635	11/12/99	48	11/17/99	86360	993115	11/19/99
368414	36581	11/12/99	1	11/16/99	86360	993115	11/22/99
368344	36649	11/12/99	1	12/ 1/99	86360	993115	12/ 2/99
368393	36598	11/12/99	3	11/16/99	86360	993115	11/22/99
368370	36624	11/12/99	1	11/17/99	86360	993115	11/19/99
368416	36579	11/12/99	1	11/16/99	86360	993115	11/22/99
368408	36587	11/12/99	1	11/16/99	86360	993115	
368378	36616	11/12/99	1	11/17/99	86360	993115	11/22/99
368403	36592	11/12/99	25	11/16/99	86360	993115	11/22/99
368368	36626	11/12/99	1	11/17/99	86360	993115	11/22/99
368359	36639	11/12/99	4	12/ 1/99	86360	993115	12/ 2/99
368384	36610	11/12/99	1	12/ 1/99	86360	993115	12/27/99
368419	36576	11/12/99	1	11/16/99	86360	993115	11/22/99
368381	36613	11/12/99	1	11/17/99	86360	993115	11/22/99
368342	36647	11/12/99	1	12/ 1/99	86360	993115	12/ 2/99
368361	36633	11/12/99	2	12/ 1/99	86360	993115	12/ 2/99
368392	36599	11/12/99	4	11/16/99	86360	993115	11/22/99
368409	36586	11/12/99	1	11/16/99	86360	993115	11/22/99
368373	36621	11/12/99	367	11/17/99	86360	993115	11/22/99
368366	36628	11/12/99	49	11/18/99	86360	993115	11/20/99
368343	36648	11/12/99	4	12/ 1/99	86360	993115	12/ 2/99
368394	36597	11/12/99	3	11/16/99	86360	993115	11/22/99
368406	36588	11/12/99	32	11/16/99	86360	993115	11/22/99
368341	36646	11/12/99	1	12/ 1/99	86360	993115	12/ 2/99



Image01.jpg



Image02.jpg



Image03.jpg



Image04.jpg



Image05.jpg

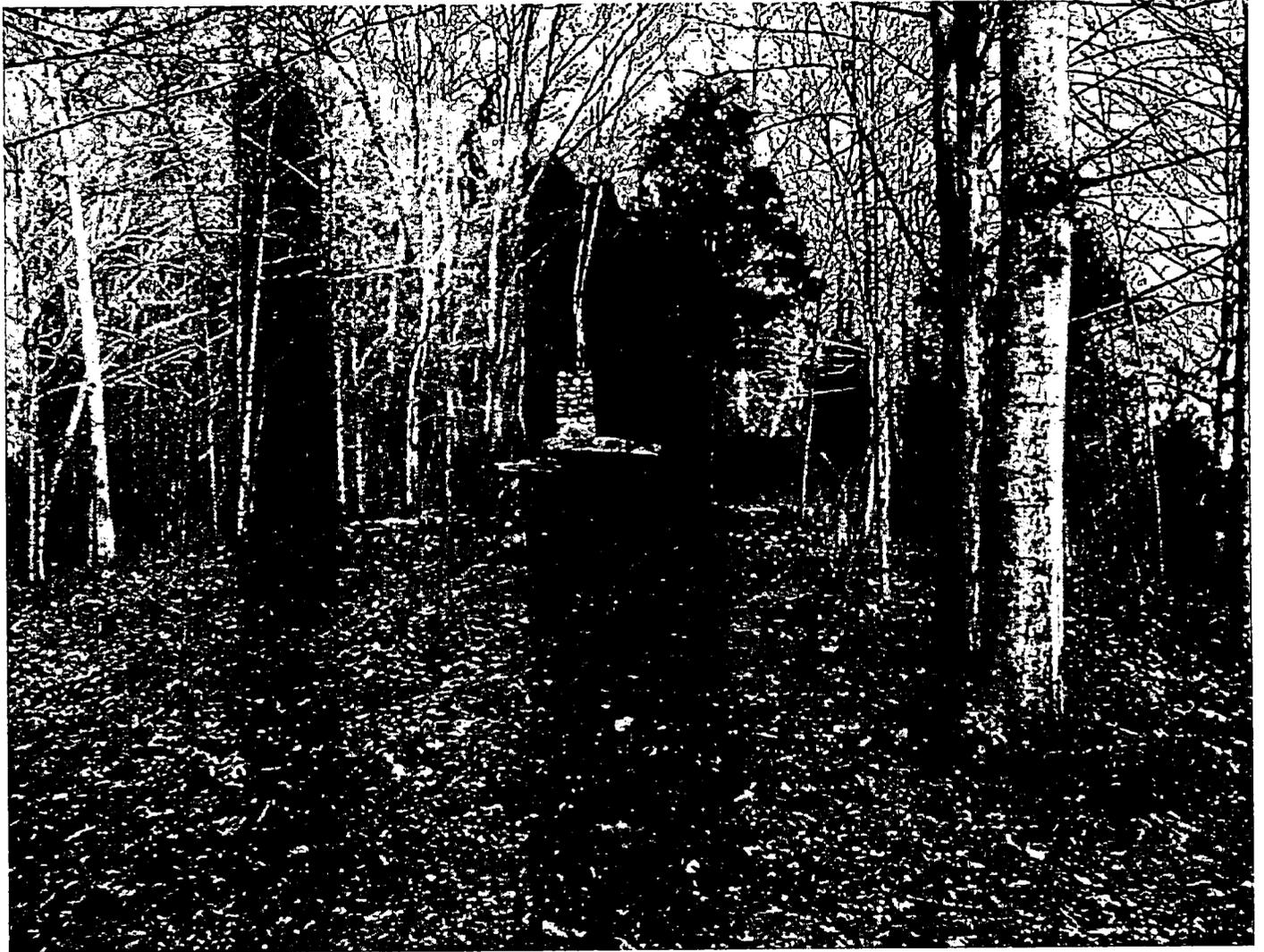


Image06.jpg



Image07.jpg



Image08.jpg



Image09.jpg



Image10.jpg



Image11.jpg



Image12.jpg



Image13.jpg



Image14.jpg



Image15.jpg



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

January 21, 2000

Overt L. Carroll
President/General Manager
Clark Energy Cooperative, Inc.
P. O. Box 748
2640 Ironworks Road
Winchester, KY. 40392 0748

Dimitri Vaughn Taylor
P. O. Box 4242
Winchester, KY. 40391

RE: Case No. 1999-513

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIMITRI VAUGHN TAYLOR)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 99-513
)	
CLARK ENERGY COOPERATIVE, INC.)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

Clark Energy Cooperative, Inc. ("Clark Energy") is hereby notified that it has been named as defendant in a formal complaint filed on December 21, 1999, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, Clark Energy is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 21st day of January, 2000.

By the Commission

ATTEST:


Executive Director

RECEIVED
DEC 21 1999

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

Dimitri Vaughn Taylor
(Your Full Name)
COMPLAINANT

VS.

Clark RECC
(Name of Utility)
DEFENDANT

RECEIVED

DEC 22 1999

GENERAL COUNSEL

CASE 99-513

COMPLAINT

The complaint of Dimitri Vaughn Taylor respectfully shows:
(Your Full Name)

(a) Dimitri Vaughn Taylor
(Your Full Name)
PO Box 4242
1220 Enterprise Dr. Winchester Ky 40391
(Your Address)

(b) Clark RECC
(Name of Utility)
PO Box 748 Winchester Ky 40391
(Address of Utility)

(c) That: Before purchasing property
(Describe here, attaching additional sheets if necessary.)

on the day I went to
the specific act, fully and clearly, or facts that are the reason
the defendant to see about getting
and basis for the complaint.)
the existing poles and wires and transformer
reconnected. I had told them the property

ADDENDUM

Before I bought the property checked with the RECC and was told it would be no problem to provide me with electric service. Electric service for the preexisting home was all in tact, poles, transformer and wires. After I bought the property, was told to get a building permit. In order to get a building permit I had to contact Frankfort. Frankfort approved the composting toilet, then referred to Division of Water concerning gray water. The Division of Water, Kentucky River Authority, is willing to issue a permit for \$500.00. Called the RECC and told them I am on my way to pay the \$500.00 and obtain permit. The next day the RECC went out to my property and cut the poles and retired the line. Enclosed pictures show that poles, equipment, transformer and wires are still lying on the ground and in the creek. I need electricity at this location to proceed with building my residence.



12/21/99

Formal Complaint

Kavehn Taylor vs. Clack RECC

Page 2 of 2

was land locked and river access was all I had. They responded No problem they had Right of way get property in my name and they would reconnect power. They then said to obtain building permit. ~~then~~ just before permit (days) cleared they retired line and told me to build a road

Wherefore, complainant asks

Electricity like everybody else
(Specifically state the relief desired.)

Dated at Winchester, Kentucky, this 17 day
(Your City)

of Dec, 1999.
(Month)

[Signature]
(Your Signature)

(Name and address of attorney, if any)



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

January 5, 2000

Overt L. Carroll
President/General Manager
Clark Energy Cooperative, Inc.
P. O. Box 748
2640 Ironworks Road
Winchester, KY. 40392 0748

Dimitri Vaughn Taylor
P. O. Box 4242
Winchester, KY. 40391

RE: Case No. 1999-513
CLARK ENERGY COOPERATIVE, INC.
(Complaints - Service) OF DIMITRI VAUGHN TAYLOR

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received December 21, 1999 and has been assigned Case No. 1999-513. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,


Stephanie Bell
Secretary of the Commission

SB/jc

RECEIVED

DEC 21 1999

COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE
COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

Dimitri Vaughn Taylor
(Your Full Name))
COMPLAINANT)

VS.

Clark RECC
(Name of Utility))
DEFENDANT)

CASE

99-513

COMPLAINT

The complaint of Dimitri Vaughn Taylor respectfully shows:

(Your Full Name)

(a)

Dimitri Vaughn Taylor
(Your Full Name)

PO Box 4242

1220 Enterprise Dr. Winchester Ky 40391
(Your Address)

(b)

Clark RECC
(Name of Utility)

PO Box 748 Winchester Ky 40391
(Address of Utility)

(c)

That: Before purchasing property
(Describe here, attaching additional sheets if necessary.)

on the Ry. lines I went to
the specific act, fully and clearly, or facts that are the reason

the Defendant to see about getting
and basis for the complaint.)

the existing poles and wires and transformer
reconnected. I had told them the property

ADDENDUM

Before I bought the property checked with the RECC and was told it would be no problem to provide me with electric service. Electric service for the preexisting home was all in tact, poles, transformer and wires. After I bought the property, was told to get a building permit. In order to get a building permit I had to contact Frankfort. Frankfort approved the composting toilet, then referred to Division of Water concerning gray water. The Division of Water, Kentucky River Authority, is willing to issue a permit for \$500.00. Called the RECC and told them I am on my way to pay the \$500.00 and obtain permit. The next day the RECC went out to my property and cut the poles and retired the line. Enclosed pictures show that poles, equipment, transformer and wires are still lying on the ground and in the creek. I need electricity at this location to proceed with building my residence.



12/21/99

Formal Complaint

Vivahn Taylor vs. Clark RECC

Page 2 of 2

was land locked and river Access was all I had. They responded No problem they had Right of way get property in my name and they would reconnect power. They then said to obtain building permit. ~~When~~ Just before permit (days) cleared they retired line and told me to build a road

Wherefore, complainant asks Electricity like everybody else
(Specifically state the relief desired.)

Dated at Winchester, Kentucky, this 17 day
(Your City)

of Dec, 1999.
(Month)

[Signature]
(Your Signature)

(Name and address of attorney, if any)

ORIGINAL

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

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IN THE MATTER OF:

DIMITRI VAUGHN TAYLOR

COMPLAINANT

VS.

CLARK ENERGY COOPERATIVE, INC.

DEFENDANT

CASE NO. 99-513

FILED
JUL 27 2001
PUBLIC SERVICE
COMMISSION

TRANSCRIPT OF EVIDENCE

DATE OF HEARING: JULY 12, 2001

APPEARANCES

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HON. H. HOWELL BRADY, JR., HEARING OFFICER

HON. JEB PINNEY, COUNSEL FOR COMMISSION STAFF

COUNSEL FOR CLARK ENERGY COOPERATIVE, INC.:

HON. BRIAN N. THOMAS
GRANT, ROSE & PUMPHREY
51 SOUTH MAIN STREET
WINCHESTER, KENTUCKY 40391

COUNSEL FOR DIMITRI VAUGHN TAYLOR:

HON. PATRICK F. NASH
112 NORTH UPPER STREET
LEXINGTON, KENTUCKY 40507

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1 HEARING OFFICER BRADY:

2 Good morning. My name is Howell Brady, and I'm the
3 Hearing Examiner for the Commission and call for
4 hearing today Case No. 99-513 in the matter of Dimitri
5 Vaughn Taylor versus Clark Energy Cooperative, Inc.
6 Would counsels please introduce themselves starting
7 with the complainant?

8 MR. NASH:

9 Your Honor, Patrick Nash on behalf of Dimitri Vaughn
10 Taylor.

11 HEARING OFFICER BRADY:

12 Thank you. Welcome. And for the respondent/defendant?

13 MR. THOMAS:

14 Your Honor, Brian Thomas on behalf of Clark Energy and
15 this is Shannon Messer, the Clark Energy repre-
16 sentative.

17 HEARING OFFICER BRADY:

18 Welcome.

19 MR. THOMAS:

20 Thank you. Your Honor, before we begin, . . .

21 HEARING OFFICER BRADY:

22 Just one minute. I'll be back.

23 MR. THOMAS:

24 Okay. Thank you.

25

1 HEARING OFFICER BRADY:

2 And for the Commission?

3 MR. PINNEY:

4 Your Honor, I'm Jeb Pinney on behalf of the Commission,
5 and I'm accompanied by Marvin Goff and Martha Morton.

6 HEARING OFFICER BRADY:

7 Thank you. Now, Mr. Thomas, that brings me to the time
8 when I would have asked for any pretrial motions,
9 comments, or whatever. So what's your pleasure?

10 MR. THOMAS:

11 Thank you, Your Honor. I do have one motion that I
12 would like to file, and I've tendered a copy to Mr.
13 Nash, if I may approach.

14 HEARING OFFICER BRADY:

15 Yes, sir. Thank you. You've given the others copies?

16 MR. THOMAS:

17 No, sir, I have not. I do have copies for the rest of
18 the Commission staff. Your Honor, in response to Mr.
19 Taylor's rebuttal testimony, which was filed on July 5,
20 at that point was the first time that mention was ever
21 made of any road that traversed along the property
22 which Mr. Taylor would allege would provide access from
23 Clark Energy. In response to that, Clark Energy
24 attempted to contact a couple of the neighbors and was
25 able to do so, and, because of the late date, they were

1 unable to be here, but they wished to file these
2 affidavits with the Commission, and it's our motion
3 that you allow the sworn testimony of these individuals
4 to be admitted into the record.

5 HEARING OFFICER BRADY:

6 Have you had a chance to review this?

7 MR. NASH:

8 Briefly, Your Honor. These were handed to be about 20
9 minutes ago, and I've, in that period of time, looked
10 them over. We would object for a couple of reasons.
11 If the purpose of these is to rebut our contention that
12 there is an old roadbed there, they don't appear to
13 serve that purpose. For one, the affidavit of Mitchell
14 Sidwell, he's a landowner upon whose land that old
15 roadbed does not exist, and the questions - or, at
16 least, there's no questions but the statements that he
17 makes in his affidavit don't relate to that but relate
18 to issues that were defined in a record as early as the
19 initial Complaint and Response. In regards to Mr.
20 Hanley, whose property upon which that old roadbed does
21 exist, he was not asked about it nor was he apparently
22 shown the photographs that we have taken and filed of
23 record that show that old roadbed, and, again, his
24 statements are merely duplicative, really, in toto of
25 witnesses that they have already presented and issues

1 that have already been of record. So we object to the
2 fact that it doesn't really rebut our rebuttal, and
3 then, of course, we object to the timing and the fact
4 that neither of these witnesses are here and available
5 for cross examination, and we've had no time to prepare
6 for these.

7 HEARING OFFICER BRADY:

8 All right. Thank you. Mr. Pinney, have you had an
9 opportunity to review the motion? Any comments?

10 MR. PINNEY:

11 I just received it and . . .

12 HEARING OFFICER BRADY:

13 At the same time I did this morning?

14 MR. PINNEY:

15 Yes, Your Honor.

16 HEARING OFFICER BRADY:

17 I will accept the motion for purposes of review, defer
18 a decision at this time, and will either let you know
19 orally today or serve it or let the Commission itself
20 review whatever decision I may make with it. So I will
21 receive it for purposes of my review and defer a
22 decision until later. Any other motions before I make
23 a couple of comments about logistics?

24 MR. NASH:

25 No, Judge.

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MR. THOMAS:

No, Your Honor.

HEARING OFFICER BRADY:

Anything else?

MR. THOMAS:

No, Your Honor.

HEARING OFFICER BRADY:

Mr. Nash, anything else?

MR. NASH:

No, Your Honor.

HEARING OFFICER BRADY:

Mr. Pinney?

MR. PINNEY:

No, Your Honor.

HEARING OFFICER BRADY:

The only logistical comment I will make is that my suggestion will be that we go to approximately noon. If somebody is, as they probably will be, in the middle of testifying, you know, we can slide that over to 12:15 or so. I do not take long lunch breaks or long breaks. I would propose probably stopping at noon for approximately 30 minutes, 45 minutes at the most, and then we'll get back and keep on our business. I'm not a big fan of extended breaks, in any event. However, if someone has problems of any sort, needs a break

1 quicker than I might normally stop, by all means just
2 raise your hand, get that information to me, and, you
3 know, I'll honor those, you know, with no problem. All
4 right. Last call around. Mr. Nash, anything else?

5 MR. NASH:

6 The only other thing, Your Honor, I guess I would ask
7 for separation of witnesses if that's your normal
8 practice in these situations.

9 HEARING OFFICER BRADY:

10 All right. Mr. Thomas?

11 MR. THOMAS:

12 We would have no objection, Your Honor.

13 HEARING OFFICER BRADY:

14 Mr. Pinney? All right. Ladies and gentlemen, the
15 motion has been made and, not having any objections
16 thereto, I'll sustain to ask that the witnesses be
17 separated. What that means is, is that, in just a few
18 seconds, I will ask anyone who is present who
19 anticipates being called as a witness to step outside
20 and wait in the lobby or thereabouts. There's a coffee
21 room right off the lobby. There's a lunchroom in the
22 basement that has a better selection of vending
23 machines. The reason for that is that whatever you're
24 going to tell me represents your view of a particular
25 event or occurrence. I approve of separation of

1 witnesses, because I want very much to hear what your
2 view is, and I want that view to be as pristine as
3 possible without having, you know, heard other matters
4 - we're all human - that might affect us or affect that
5 perception in any way. So I'm very much interested in
6 hearing whatever you, as a witness, might have to say,
7 and I want it as pure or pristine as possible because
8 that will help me the most, is to hear it that way. So
9 I will ask anyone present who anticipates being called
10 as a witness, and I'll ask counsels to oversee this,
11 would you please step out at this time, and we'll call
12 you as you're needed. Does everybody have water or
13 coffee or something wet, in any event? All right.
14 Okay. Anything else, Mr. Nash?

15 MR. NASH:

16 No, Your Honor.

17 HEARING OFFICER BRADY:

18 And I did have it right; Brian Thomas?

19 MR. THOMAS:

20 That's correct.

21 HEARING OFFICER BRADY:

22 Good. Mr. Pinney, anything else?

23 MR. PINNEY:

24 No, Your Honor.

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HEARING OFFICER BRADY:

All right. I reckon we're ready to begin, Mr. Nash.

MR. NASH:

It's my understanding that there's to be no opening statement.

HEARING OFFICER BRADY:

Right.

MR. NASH:

Just to proceed directly with witnesses?

HEARING OFFICER BRADY:

Right.

MR. NASH:

Okay. I would put on Dimitri Vaughn Taylor.

HEARING OFFICER BRADY:

All right, sir, if you'll go over to the witness area.

WITNESS SWORN

HEARING OFFICER BRADY:

Thank you. Have a seat, please. You may ask, Mr. Nash.

MR. NASH:

Again, Your Honor, trying to comport with the pretrial Orders, I would simply ask . . .

1 HEARING OFFICER BRADY:

2 All right. Mr. Nash, you're exactly right.
3 That's the way we do it and, at this time, Mr.
4 Thomas, you may cross our witness.

5 MR. THOMAS:

6 Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. THOMAS:

9 Q. Mr. Taylor, we have met.

10 MR. THOMAS:

11 And, Your Honor, is it procedurally okay if I were
12 to stand or is it preferable . . .

13 HEARING OFFICER BRADY:

14 Whichever you're more comfortable.

15 MR. THOMAS:

16 Thank you.

17 Q. Mr. Taylor, we met just briefly the other day. That
18 would be the first time that we've met. I am Brian
19 Thomas, and I'm representing Clark Energy, who is the
20 defendant in this case. In this matter, you filed a
21 Complaint with the Public Service Commission; didn't
22 you?

23 A. Yes, sir.

24 Q. And, in that Complaint, you stated that you had
25 contacted Clark Energy about obtaining electrical

1 service to a piece of property commonly referred to as
2 the Point?

3 A. Yes, sir.

4 Q. And, in your Complaint, you indicate that the only
5 access to that property was by river?

6 A. My access, yes.

7 Q. Okay.

8 A. I had stated to them prior to buying the property that
9 it was landlocked, as far as I knew at that time, and
10 my only access was by boat.

11 Q. Okay. And then subsequently you indicated, in a
12 statement and memorandum that was filed by Mr. Nash,
13 that the only access to the property was by foot or by
14 river?

15 A. You can walk in down the creek or you can walk in
16 through Mitchell Sidwell's property. You can also walk
17 in by Michael Hanley's property, or you can come by
18 boat.

19 Q. Okay. But, in that particular memo which you had
20 adopted as part of your testimony, I think, in your
21 direct, you indicated that there was no road access to
22 the property; is that correct?

23 A. My access, no. At this point in time, no, there's not.
24 Now, that's - further down the road, there may be some.
25 I've got to do it all in a . . .

1 Q. The statement that you actually adopted as part of your
2 verified statement, Mr. Taylor, says there was no road
3 access to the property. It doesn't say anything about
4 your access. It just says no road access, period, to
5 the property and that the only access was by foot or
6 access via the Kentucky River.

7 A. Well, I mean, that's the way you're interpreting it,
8 but that's - right. You can't drive a car there right
9 now.

10 Q. Okay.

11 A. At least, I can't.

12 Q. Okay. In your original statement, you observed that
13 the poles were in good condition?

14 A. The pools on the bottom, in the bottom, . . .

15 Q. Okay. And then . . .

16 A. . . which is the Ambrose Bush Bottom.

17 Q. Okay. And then the bottom you're referring to, would
18 that be the flat area where the old cabin stood?

19 A. Well, you have the top of the mountain, and then you
20 have the bottom along the river.

21 Q. Okay. What was the condition of the poles leading from
22 the top of the hill to the bottom?

23 A. Actually, the way we found the poles, as far as after I
24 had been up there - it's a piece of property that a lot
25 of people have been on for a long time, but the fellow

1 that owned it since, I assume - I'm not sure exactly -
2 I think it was in the seventies when he bought it . . .
3 Q. That would have been the person you bought it from?
4 A. Yes, sir.
5 Q. Is his name Murrell? Let's see.
6 A. It would be William Stir.
7 Q. Stir. Stir. That's right. I'm sorry.
8 A. We had seen the poles. The two poles that are on my
9 property were standing with wires. There are also two
10 more poles down the river bottom that were standing
11 with wires, and you could see the next pole on the top.
12 That's how we knew where - because it is thick down
13 there, but you could see where the wires went up to the
14 next pole or else it would just be a - it would be hard
15 to see a telephone pole in the woods unless you saw the
16 wires going to it. Is that your question?
17 Q. Yeah.
18 A. Okay.
19 Q. So all the poles were in good condition?
20 A. The five poles that I saw, or four poles.
21 Q. And you also stated that they were complete with
22 electrical wires?
23 A. There was wires on the poles; yes.
24 Q. Were they properly strung from one pole to the other?
25 A. Well, that's how we followed the - there were wires on

1 the poles. Now, I don't know if all of the wires were
2 on the poles, but there were wires on the poles.

3 Q. Was there a transformer located on the property?

4 A. Yes, sir.

5 Q. What was the condition of that transformer?

6 A. It was old, but . . .

7 Q. In good shape?

8 A. Well, it probably needed to be replaced.

9 Q. What was the condition of the growth around those
10 telephone poles?

11 A. Which ones?

12 Q. Well, let's start at the two down in the Bush Bottom.

13 A. On my property?

14 Q. On your property.

15 A. The condition of them as far as?

16 Q. Well, did the lines go from one pole to the next?

17 A. Yeah. Yeah.

18 Q. And were there any trees growing up through those
19 lines?

20 A. On my property, no.

21 Q. What about the two poles that you mentioned down the
22 river?

23 A. Between my property and the next pole, there was, you
24 know, I mean, there was some saplings and trees grown
25 up.

1 Q. Now, was . . .

2 A. I guess some the trees may have had the wires pushed up
3 in the air, but . . .

4 Q. Now, were all of these observations made before you
5 purchased the property?

6 A. Yes, sir.

7 Q. And, based upon that, when did you go visit Clark
8 Energy?

9 A. Prior to me purchasing the property.

10 Q. Approximately what time of year was it?

11 A. Before I went and bought the property. I'm going to
12 say early January, February maybe. We had been up
13 there a lot before I purchased the property. So I
14 don't - it could have been December. It could have
15 been in November. I don't . . .

16 Q. So you're saying four or five months before you bought
17 the property you went there?

18 A. Possibly, yes.

19 Q. What did they tell you when - well, first, . . .

20 A. Oh, when I went to Clark RECC?

21 Q. When you went to Clark RECC.

22 A. Oh, that was just briefly prior to me purchasing the
23 property. That's when I was getting ready to buy it.

24 Q. All right. When approximately was that?

25 A. What?

1 Q. What time of year did you go to Clark Energy?
2 A. I assume I bought it in, what, May, and so I'll just
3 say the first of the year.
4 Q. So you would say January or February?
5 A. Something along that line.
6 Q. If your prior statement said March of '97, would that
7 be an accurate statement?
8 A. No. No. That would be after I bought it. Did I buy
9 it in May? I don't have any of that in front of me,
10 but I'm . . .
11 Q. Well, you bought the property May 28 of '97, or it was
12 recorded in the Clerk's Office May 28. I think you
13 actually bought it May 22.
14 A. Okay. Well, when I went to Clark, it was prior to
15 that.
16 Q. Okay. And would that have been around March of '97?
17 A. Okay.
18 Q. Well, I mean, . . .
19 A. Yeah.
20 Q. Okay.
21 A. Okay.
22 Q. Who did you speak with at Clark Energy?
23 A. One of their guys at the front desk there in
24 Operations.
25 Q. And what did this Operations individual tell you?

1 A. I informed him of the property I was getting ready to
2 purchase or was looking at purchasing and what was the
3 chances of getting the electrical service hooked back
4 up, and he said, if - I told him about the tags and
5 everything on the poles and the transformers and the
6 wires, and he said it would be no problem to get it
7 hooked back up. I just needed to get a Deed in my
8 name, to get the property in my name, and they would
9 get it hooked up.

10 Q. So did you describe the condition of the poles and the
11 wires and the transformer?

12 A. I told him that I was landlocked and then I had no
13 access and that was a big factor on whether or not I
14 purchased the property or not.

15 Q. In fact, you told him it was landlocked with no road
16 access; didn't you?

17 A. Probably so, yeah, that I was aware of. I mean, as far
18 as me having a road to my house, yeah, I'm sure I told
19 him that.

20 Q. Okay.

21 A. At that point, they said that they didn't have a
22 problem because they had access. Their poles and wires
23 and transformers was there, and they could hook it back
24 up.

25 Q. How many men were working in this department, this

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Operations Department?

A. I don't know. I was in the front. There was a counter with a lady, a couple of ladies maybe, that were doing people's payments, and he had actually come from the back, down the hall somewhere.

Q. At that point, did you go ahead and get you a membership application?

A. No.

Q. Why didn't you get one at that time?

A. Because he said I needed to get a Deed. He said, "You buy the property. You get a Deed. We'll hook it up."

Q. Do you remember subsequently filling out an application for membership?

A. Just as soon as I got a Deed in my hand I went back there.

MR. THOMAS:

Your Honor, these have already been introduced as attached Exhibits to Mr. Taylor's statement. May I ask from those and just make reference to that application?

HEARING OFFICER BRADY:

Yes.

MR. NASH:

No objection.

Q. I'm going to show you a document . . .

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MR. THOMAS:

If I may approach the witness, Your Honor.

HEARING OFFICER BRADY:

You may.

Q. . . . that is attached to your statement in this.

A. Uh-huh.

Q. Does this look familiar to you?

A. Yeah, that's my application.

Q. All right. I want to ask you to take special note to Paragraph 5.

A. Right.

Q. There's a sentence here that says, "I hereby certify to the cooperative that I am or am not the owner of the land . . ."

A. Right.

Q. If there was a requirement for Clark Energy that you be the owner, why would that provision be contained in their application?

MR. NASH:

I object.

A. Well, I think that refers to renters.

MR. NASH:

Well, I object to that question.

HEARING OFFICER BRADY:

Hold just a minute. Mr. Nash?

1 MR. NASH:

2 He's asking him to interpret why Clark would put
3 that phrase in one of their own contracts, and I
4 just don't think he's the proper person to ask
5 that question of.

6 HEARING OFFICER BRADY:

7 Mr. Thomas?

8 MR. THOMAS:

9 Your Honor, it's very relevant because he's
10 attempting to make allegations that Clark Energy
11 behaved in a certain manner when he went and had
12 preliminary discussions with them. I think it
13 clearly shows by this application that he had the
14 option to select whether he owned or did not own
15 the property. I think it's very important,
16 because we deny making that statement.

17 MR. NASH:

18 I think that question is appropriate, you know,
19 "Did the form have that there when you signed it?"
20 but then to turn and say, "Okay, now, why would
21 Clark put this in their form?" that's the question
22 I object to.

23 A. Well, I think that - I mean, it . . .

24 MR. NASH:

25 Hold on.

1 HEARING OFFICER BRADY:

2 Hold on, Mr. Taylor.

3 A. Oh, okay.

4 HEARING OFFICER BRADY:

5 I'm going to let you ask the question, but I agree
6 with Mr. Nash that the way you framed the question
7 is you're essentially asking the witness to
8 interpret or speculate on why Clark Energy would
9 have put the question there, and basically I agree
10 with Mr. Nash that that's objectionable, but, on a
11 very narrow turn, I'm going to let you go ahead
12 and do it and give you some opportunity to tie it
13 in later. So basically what I'm going to do is
14 defer ruling on the motion, let you ask the
15 question, and see if you can tie it in, and, if
16 you can't, then I'm going to sustain Mr. Nash's
17 motion.

18 MR. THOMAS:

19 Your Honor, I would be more than happy to rephrase
20 the question . . .

21 HEARING OFFICER BRADY:

22 That will be fine.

23 MR. THOMAS:

24 . . . just to make sure that it complies so we
25 don't have to fall into that.

1 HEARING OFFICER BRADY:

2 All right. All right.

3 Q. Mr. Taylor, on this document, is there a place that
4 indicates a space to check whether you are or are not
5 the owner of the property?

6 A. Yeah.

7 Q. Okay. And, underneath that, is there not also a place
8 to indicate the name and address of the property owner
9 if you are not the owner?

10 A. Well, of course.

11 Q. Okay. Did anyone at Clark Energy, on that first visit,
12 tell you that it was a requirement that you actually
13 bring the Deed in to show them proof of ownership?

14 A. I don't think he said "Bring the Deed in," but, yeah,
15 that was pretty much a requirement, to get it in my
16 name. I think that was just like to stop me from
17 putting electric on your property. I mean, I don't
18 know why.

19 Q. Did you read that application before you signed it?

20 A. No. I mean, I have since then.

21 Q. Okay.

22 MR. THOMAS:

23 If I may approach again.

24 Q. In Paragraph 3, there's a statement that says, "The
25 Applicant will cause his or her premises to be wired in

1 accordance with wiring specifications required by the
2 State of Kentucky and/or local codes."
3 A. Right.
4 Q. Do you remember reading that?
5 A. Well, I have since then; yeah.
6 Q. And this is your signature here at the bottom?
7 A. Yes, sir.
8 Q. Okay. Have you had your property wired in accordance
9 with that paragraph, with that provision?
10 A. At this point in time, no. I mean, I think that refers
11 to the temporary service that was getting ready to be
12 installed.
13 Q. Additionally, Mr. Taylor, you also submitted to the
14 Commission an Exhibit which is a picture of what
15 appears to be some type of drawing showing electrical
16 service, a temporary service?
17 A. Yes, sir.
18 MR. THOMAS:
19 If I may approach again.
20 Q. This particular, and I don't - all I have is the copy
21 that was provided by your counsel. I think he has the
22 original.
23 A. Yes, sir.
24 Q. What is this drawing on the bottom right corner?
25 A. What they had done was they gave me just a sheet of

1 paper they had on the table, or whatever, and he drew
2 out what it was going to take for me to get - how I was
3 going to put my electric because I've never done that
4 before, what I needed to do to get electric service, I
5 mean, as far as putting the temporary service in.

6 Q. What is this drawing right here?

7 A. That's a picture of the Point with my property bounding
8 with the existing telephone poles and where my property
9 stopped and with the creek and the river.

10 Q. And who drew that picture?

11 A. I drew that.

12 Q. So you drew this picture, and then someone from Clark
13 Energy, you stated, . . .

14 A. After I drew this picture, he drew this and said, "You
15 need to stick it right there," and then that's what I
16 needed to do. He put down all the pieces that I needed
17 to do it with.

18 Q. And then did you just take this document with you when
19 you left?

20 A. He gave it to me; yeah.

21 Q. Do you know who the individual was that . . .

22 A. No, I don't.

23 Q. . . . told you about the electrical service?

24 A. The temporary service?

25 Q. Yeah.

1 A. It was just one of the fellows I talked to down there.
2 Q. Have you had any of that temporary service done?
3 A. I've got a lot of the parts. It's just that you
4 can't - you know, if you take \$500, which is about what
5 that is, and set it down there on that property, you
6 need to get it on because, if not, they'll get in there
7 and get it. Somebody will get in there and get it.
8 Q. When you went back in to sign up, Mr. Taylor, in May of
9 1997, in addition to filling out the application, what
10 other forms did you fill out?
11 A. I believe that's all I filled out. Now, I also had
12 service at the house - I had Clark RECC at another
13 location that was in my name, and, at that point, they
14 wanted me to terminate that service and sign up on
15 this. The day I signed on that my name was taken out
16 of that other service.
17 Q. Was that other service for your primary residence?
18 A. No.
19 Q. What was the other service for?
20 A. Ex-wife's house.
21 Q. All right. And what paperwork did you fill out to
22 complete that termination?
23 A. I don't know. You know, I assume I signed something.
24 I had to have. You just can't - but, I mean, maybe I
25 didn't.

1 Q. Well, you state in your testimony that you signed some
2 termination papers?
3 A. I'm sure I signed something. It may have been - the
4 day I signed that up was the day that my termination of
5 3604 Athens-Boonesborough Road was terminated.
6 Q. And you have testified previously that . . .
7 A. Did this have anything to do with it?
8 Q. . . . you signed a termination document.
9 A. Okay. Well, . . .
10 Q. So the question is did you sign the termination
11 document or did you not?
12 A. I signed some papers that day. I don't know . . .
13 Q. But you don't know what they were for?
14 A. Like I said, I didn't even read this until a year ago.
15 Q. After you signed or after you made your application,
16 did Clark Energy go ahead and turn on the service?
17 A. They said they would get on it.
18 Q. And what happened next? Didn't you meet with an
19 individual named Todd Peyton?
20 A. Yes, sir.
21 Q. Did you make arrangements with Clark Energy to meet at
22 a boat dock, initially?
23 A. We were going to go by river; yeah.
24 Q. And that was subsequently - why would you have gone by
25 river?

1 A. Because that was my - from what I said from day one, I
2 didn't have any access other than river. So they said,
3 "Okay. We'll meet you at the boat dock."
4 Q. And then was that meeting place subsequently changed?
5 A. Yes, sir.
6 Q. And you ended up meeting at a country store in the
7 vicinity; didn't you?
8 A. Yeah.
9 Q. Why didn't you try to make arrangements to meet at the
10 home site or to talk to someone about allowing you
11 access?
12 A. Meet at whose home site?
13 Q. At the old cabin site, your property.
14 A. Well, that's where we were going.
15 Q. But why didn't you go ahead and just tell Mr. Peyton
16 that you would meet him down there or you would meet
17 him?
18 A. Because he didn't have a clue where it was.
19 Q. So where did you end up going when you met with Mr.
20 Peyton?
21 A. We went down - see, I wasn't - once those lines hit the
22 top of the hill, I didn't know where they went. I
23 mean, they were at the top of the hill, which I assumed
24 you could get a truck to, which apparently you can, but
25 I wasn't even aware where they went after they went to

1 the top of the hill. Alls I knew is there was wires
2 that came down the hill with poles and transformer and
3 they were - I mean, . . .
4 Q. How was it, then, that you . . .
5 A. Well, we drove around the end of Grimes Mill Road,
6 Sidwell Lane. Munches Corner is where we actually went
7 to, which is where we went to the driveway of Mike
8 Hanley, and he's got a big gate, and it was locked.
9 Q. And who determined, I guess, that that would be where
10 the . . .
11 A. He did.
12 Q. Mr. Peyton?
13 A. Yes, sir.
14 Q. And where did you subsequently go after that, after
15 leaving Mr. Hanley's property?
16 A. Now, after we left Hanley, he took me back to my truck
17 at Judy Ray's. It was the country store we met at.
18 Q. Did you ever go to Mitchell Sidwell's house?
19 A. No. Me and Mike Peyton did not go to or . . .
20 Q. Todd Peyton.
21 A. Todd Peyton.
22 Q. Had you ever been to Mr. Sidwell's house?
23 A. Oh, many times.
24 Q. Did you ever go to his house before you purchased the
25 property?

1 A. Negative. You know, I think maybe I had gone to where
2 he used to live, which was like three houses up Sidwell
3 Lane, to discuss buying the Point because, I mean, it's
4 a small town, I mean, a small area, Ford.

5 Q. Did it ever come to your thought - did you ever think
6 about, well, if Mr. Hanley's property is unavailable
7 and we can't get through, that we would drive around
8 and try to go down Sidwell Lane, since you had been
9 there previously to talk about purchasing the property?

10 A. Well, you really can't get to it from Sidwell Lane.
11 You have to go actually through the farm at the end of
12 Sidwell Lane and drive to the back of that farm, and
13 then it's an easier walk in, as far as walking in, to
14 drive almost within a quarter of a mile of the Point.

15 Q. And that would be as if you went across the Hanley
16 property?

17 A. No.

18 Q. Okay. If you went across Sidwell's property, you could
19 get within a quarter of a mile of the site?

20 A. Yeah, but you still have to cross Hanley's to get to
21 the Point. Mitchell Sidwell's property doesn't even
22 border my property.

23 Q. Okay. How is the access from the Hanley property to
24 your property, if you were to go and start it where the
25 Hanley residence is?

1 A. Well, we've never seen really eye-to-eye since day one,
2 and, up until here several weeks ago, I had never
3 walked from the Point to Hanley's house, but I knew
4 there was a road. I know people that have seen cars on
5 the Point. I knew there was access, but it wasn't my
6 access or, at least, my access at this time.

7 Q. Was there ever any discussion that you build a road?

8 A. With anybody? Not until this is all taken care of; no.

9 Q. From Mr. Hanley's gate, were you all able to see where
10 the electric line went to the Point?

11 A. You can see the - I mean, according to Mr. Peyton, I
12 mean, he was like, "Well, it looks like there it is,"
13 and, at that point, he was all good with it. He didn't
14 have a problem with it or, at least, it appeared that
15 he didn't have a problem with it.

16 Q. I'm going to show you another document which is the
17 Member Data sheet.

18 MR. THOMAS:

19 If I may approach again, Your Honor. Thank you.

20 HEARING OFFICER BRADY:

21 I appreciate the question, but all counsels, if
22 you have Exhibits, may approach the witness.

23 MR. THOMAS:

24 Thank you, Your Honor.

25 Q. I'm going to ask you to take a look at that sheet right

1 there.

2 A. Uh-huh.

3 Q. It indicates, as best as I can understand it, it's a -
4 I call it a Member Data sheet . . .

5 A. Uh-huh.

6 Q. . . . because that's the first topic that's centered
7 there. Is any of that in your handwriting?

8 A. No.

9 Q. Did you fill out any of that?

10 A. No.

11 Q. So that we don't have any speculation, any of the words
12 that are there with blank spaces to fill in, you don't
13 know what they're for or why they were put there?

14 A. Well, I mean, . . .

15 Q. There may be some obvious names.

16 A. Yeah, it's obvious why they were put there; location
17 between Clays Ferry and Boonesborough on the river or,
18 you know, okay.

19 Q. Since you say some of it's obvious, do you know why
20 that right-of-way easement line is there?

21 A. It says right-of-way easement, okay.

22 Q. Do you know what that means?

23 A. I assume it means it's okay.

24 Q. But you don't know? You don't know why Clark Energy
25 would have put that particular provision . . .

1 A. Well, I do now. I mean, I didn't know at the time.
2 Q. Okay.
3 A. I mean, after reading this and seeing this, I assumed
4 that, when you put your little initials here where it
5 says you can maintain, replace, move, hookup,
6 discontinue, da, da, da, da, da, ". . . privilege to
7 cut down and/or treat with herbicides ... trees and
8 bushes . . ." I mean, it's a big paragraph.
9 Q. Basically giving them a right-of-way on your property
10 as the applicant?
11 A. Well, I think it probably gives them the right-of-way
12 to run wires across my property.
13 Q. But here on the membership data, where it says
14 membership data, membership number, and whether you're
15 an old, new, or joint member, there's nothing marked
16 there; is there? There's no marks made on this
17 document?
18 A. No. No, not on that. I paid service, though, for
19 almost ten years. So, I mean, I was - that was just
20 neglected, though.
21 Q. You state that, in June of 1997, in your Verified
22 Testimony, that you were first told about permits that
23 were required before service could be attached or
24 before service could be connected at your site?
25 A. Right.

1 Q. Have you gotten - what permits did they tell you that
2 were required?
3 A. Well, I had to get the septic before you could get a
4 building permit.
5 Q. And have you gotten that septic permit?
6 A. Yeah, I've got that taken care of.
7 Q. Okay.
8 A. I don't have the permit, but I've got it resolved to
9 where that could be accomplished in a matter of days.
10 Actually, I could do it while I'm here in Frankfort. I
11 mean, that's not a . . .
12 Q. And have you talked to the - who have you talked to
13 about getting your septic system installed . . .
14 A. Well, it wouldn't be a septic.
15 Q. . . . or to get it approved?
16 A. Approved? EPA.
17 Q. Okay. Have you talked to the Clark County Health
18 Department?
19 A. Yes, I have.
20 Q. And what is . . .
21 A. He just needed to see some literature on it, and he
22 said it would probably be all good.
23 Q. Okay. So it hasn't been approved at this point?
24 A. I haven't spent \$5,000 on a composting toilet yet . . .
25 Q. Okay.

1 A. . . . but, yes, it will be approved.

2 Q. And so I would say it's safe to assume you haven't got
3 a building permit yet either?

4 A. Well, you can't get that until you get their . . .

5 Q. Since you haven't got the septic?

6 A. Well, you know, before I spend \$5,000 on a toilet and
7 \$5,000 on a water treatment, I need to know if I'm
8 going to get electric, and you can't just leave this
9 stuff in the woods. You know, there's more than just
10 racoons out there.

11 Q. And I think you've told me previously that you still
12 haven't gotten electrical service or, at least,
13 installed the temporary electrical base.

14 A. Well, there again, I mean, it's all contingent on this
15 right here, but, as far as getting the permits,
16 everybody says it's not a problem. All I have to do
17 is . . .

18 Q. Who did you talk to when you alleged that Clark - you
19 stated that you called Clark Energy and said you were
20 ready to build . . .

21 A. Right.

22 Q. . . . and were informed that the poles were cut down;
23 is that a fair statement?

24 A. No. No. No. That happened after I told them I was
25 ready to build. After I said, "Let's get it on," that

1 was . . .

2 Q. That's right. You called and said, "I'm ready to
3 build," . . .

4 A. "Let's get it on."

5 Q. . . . and you state that someone told you that the
6 poles had been cut down?

7 A. No. No.

8 Q. Okay.

9 MR. NASH:

10 For the record, I would object because that's out
11 of order in the way that his testimony has been
12 filed of record.

13 HEARING OFFICER BRADY:

14 Overruled.

15 A. Two days after I called them and told them I was ready
16 to build, the poles got cut down.

17 Q. Okay. Did you subsequently contact Clark Energy again
18 to find out why the poles were cut down?

19 A. Yeah.

20 Q. Who did you talk with?

21 A. It was a female in Operations.

22 Q. And you didn't get her name?

23 A. No, I didn't.

24 Q. What did this female tell you?

25 A. She wasn't aware of anybody even being there and denied

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it point-blank; that they didn't have anything to do with it.

Q. Were you, at some subsequent point, told that the line was retired?

A. I called them back, I don't know, it may have been a day, it may have been two days, later. I wanted to know what was going on. I just assumed what they were doing was taking the old poles out and putting new poles in.

Q. Did you talk to anybody in Operations to see if that was the case?

A. Yes, I did. Several days later, I talked to her again, and, at that point, she said, yes, that they were in there and they did cut them down, but they were going to run them from a different direction. They were going to put the line in from - which was fine with me. I didn't . . .

Q. You state that - after you've told Clark Energy that all the stuff was there and they told you all you had to do was get the property in your name, why was it then necessary for you to go to the property with Mr. Peyton in June of '97?

A. The property of who?

Q. Your property with Mr. Peyton in June of '97, if they told you service was up there.

1 A. They were trying to find out where the wires went,
2 because I didn't - all I knew they was running down the
3 river and then up the cliff.

4 Q. You now state that there is an old roadbed that exists?

5 A. There's a road to the Point; yes.

6 Q. And where does that road originate?

7 A. Michael Hanley's property.

8 Q. Have you been to where that road originates? Have you
9 been along the entire course of that road?

10 A. I've been almost all the way to the top of it.

11 Q. And where does it come out in relationship to Mr.
12 Hanley's house?

13 A. Right behind his house.

14 Q. Do you have permission to travel along Mr. Hanley's
15 property to get to the Point?

16 A. Yeah, he has pretty much said I could go up there and
17 get anything that was down and burn it, that was on the
18 ground and burn it, and, as a matter of fact, the last
19 time I saw Mike Hanley, he was sitting on the Point
20 with his dogs and his bicycles. He rides a bike down
21 there daily. So, I mean, yeah.

22 Q. And what about - do you have any agreements or
23 arrangements with Mr. Sidwell about crossing his
24 property to get to the Point?

25 A. No. He has let me walk in there on numerous occasions.

1 Q. But he has not let you walk in there recently; has he?
2 A. He has actually never told me that he didn't want me
3 walking down there, but he has told several of my
4 friends. So I just assumed that I had better - he has
5 actually let - since then, he has let several people
6 walk in there, yes, that know me.
7 Q. That know you?
8 A. Yes, sir, and one of them is sitting out in the hall
9 right now.
10 Q. Please describe the terrain where the existing poles
11 were as they headed up the hill. You had indicated
12 there was a bottom where there were two poles. Please
13 describe the terrain as it goes from the bottom up to
14 the top of the hill.
15 A. It's a palisade.
16 Q. It's a palisade, but could you be a little more
17 specific? Is it a cliff? Is it a hillside? Is it a
18 bank?
19 A. Well, it's a cliff. I mean, it's a palisades, one
20 straight up. You know, you go from - actually, the
21 Deed on that Ambrose Bush Bottom says along the edge of
22 a cliff. I mean, it's a straight - it's a Kentucky
23 River - I mean, everybody knows what a palisade is;
24 right? It's a river palisade.
25 Q. And the lines went from your property up this palisade

1 to the . . .

2 A. No. The lines went down the river bottom and then,
3 from one pole, went straight up to the top of the hill
4 up the palisade to the next pole.

5 Q. Have you done any improvements to the property at all?
6 Have you had a backhoe in there or anything to do
7 any . . .

8 A. I don't have a way to get a backhoe in there, but, yes,
9 actually I've dug probably three-quarters of a footer.

10 Q. By hand?

11 A. Yeah. Yeah. A lot of the existing foundation of one
12 of the three houses that have been there was they
13 actually used the limestone itself as the building
14 foundation of it. Some of it they poured. Some of it
15 they laid up.

16 Q. But, when you say that you can't get a backhoe down
17 there, is that because you just don't have an easement?

18 A. I don't have access at this point; right.

19 Q. But, if Mr. Hanley gave you access, you say you could
20 get a backhoe down there?

21 A. Oh, yeah. There's a road that goes down the palisade.

22 Q. In your Verified Testimony, you stated that, once you
23 got the property in your name, then they would just
24 hook the electricity back up? Is that . . .

25 A. Yeah. They said they would run it 1,000 feet from the

1 last pole where the transformer was, which wasn't a
2 problem for me because 1,000 feet from the last pole
3 would be off of my property. So . . .

4 Q. Why is it that you stated that you had to meet with the
5 field personnel in order to find out where they were
6 going to run the electric if the service was already to
7 your site?

8 A. Once it went up the palisade to the top, I didn't know
9 where it terminated or where it went to or where it
10 ended up or whose property or what. I mean, that was
11 the initial - Todd Peyton was to go find out where it
12 went, and we were going to get on the boat, get on the
13 Point, and walk it. Instead he suggested what we do is
14 drive to the top of it and do it from there, but we
15 couldn't get anywhere because the gates were locked at
16 Mike Hanley's.

17 Q. But you indicated that all the lines and stuff were in
18 good shape and that you had talked with them and
19 explained to them this . . .

20 A. Well, there were wires on the poles.

21 Q. Okay. Were they . . .

22 A. Now, whether or not that they were 100 percent, you
23 know, I'm not an electrician. I know the poles are
24 standing. I know there were wires. That's how we
25 followed it was because of the wires going from pole to

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pole.
Q. I guess . . .
A. I can show you pictures that, if I don't point the telephone pole out, you can't tell it's a telephone pole, because, I mean, it looks like a tree.
Q. I guess I'm just curious as to why Clark Energy tells you, on your first day, when you describe what's there and how it's set up, that they said, "We'll hook you right back up," but then there's a requirement that you actually have to go out to find out where they're going to run the electricity.
A. I don't follow your . . .

HEARING OFFICER BRADY:

Mr. Thomas, it may help the witness focus if you'll frame them as questions rather than statements.

MR. THOMAS:

All right.

Q. Went you went to the Operations Department in May of 1997, what did they tell you needed to be done to hook up your electricity?
A. After I had bought the property and went?
Q. After you had bought the property.
A. At that point, there wasn't any requirement. At least, they didn't make me be aware of any requirement.

1 Q. But didn't they subsequently have you meet with a Clark
2 Energy representative after the May application?
3 A. Yeah. Yes, sir.
4 Q. Then why was it necessary for you to meet with Clark
5 Energy personnel to determine where to run the
6 electric?
7 A. It wasn't to determine where to run it. It was to
8 determine where it ran to.
9 Q. Well, I'm referring to your Verified Testimony, Mr.
10 Taylor, and maybe that's why I'm getting confused. The
11 statement that you made in your sworn testimony was
12 that you were to meet with the field people to find out
13 where they were going to run the electric, and I was
14 curious as to why, if all they had to do was hook you
15 up, why was it necessary for you to meet with their
16 personnel.
17 A. Well, I think you're just misinterpreting it. Well, I
18 mean, that's - I mean, it wasn't to find out where they
19 were going to run it. It was going to find out where
20 it ran to, and I don't . . .
21 Q. Mr. Taylor, I'm going to show you a copy.
22 A. Okay.
23 Q. This is the deposition that you gave . . .
24 A. Uh-huh.
25 Q. . . . in this matter . . .

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A. Uh-huh.

Q. . . . and, on Page 16, beginning with the Question 8 or beginning with Line 8, answer, "Okay. I had - they had made an appointment that day - I think it was that day - for one of their field people to meet with me and look at where they were going to run the electric."

A. Okay.

Q. So now you're saying that's not the purpose of that meeting?

A. Well, I mean, yeah, that was the purpose of that meeting, to find out where they were going to run the electric.

Q. What was the condition of the transformer? Did it have any bullet holes in it?

A. I think it had a couple of them; yes.

MR. THOMAS:

Okay. I don't have anything further at this time, Your Honor.

HEARING OFFICER BRADY:

Mr. Pinney?

MR. PINNEY:

Yes, Your Honor.

CROSS EXAMINATION

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BY MR. PINNEY:

Q. Mr. Taylor, I have a small number of questions, mainly relating to the former house located on the property. The first is, how far away is the burned down house from the Kentucky River, distance-wise?

A. I mean, it's ten feet, fifteen feet, over is straight down to the river.

Q. Okay.

A. It's just like right out of the floodplain.

Q. All right.

A. So really close, but, I mean, it's not 15 feet or you're in the water. It's 15 feet and there's a . . .

Q. A bank and . . .

A. . . . cliff, another palisade . . .

Q. Well, okay.

A. . . . that goes, I mean, right into the water. You could - well, I'm not going to go there. Yeah, it's really close to the water.

Q. And how about the distance of the house from Jouett Creek?

A. I think the width of my property - the creek goes around the Point. So I'm bordered by water on three sides, the creek on two sides. It's a peninsula. So the width of our property between creek and river is

1 maybe 150 feet.

2 Q. Okay. Did you also describe in that the rear property
3 line? I mean, how far does the property go back from
4 the river, or is that essentially the Jouett Creek
5 formed the river, part of the property line?

6 A. Well, do you have my application or the stuff, which
7 would be maybe, this, yeah, the one with the electrical
8 service on it? That's not really to scale, but, I
9 mean, the creek comes out and goes into the river, and
10 then the river is across the front.

11 Q. Okay.

12 A. Well, I go back to right about where that . . .

13 Q. All right. Well, I guess . . .

14 A. What is your question?

15 Q. Disregard it, please.

16 A. Okay.

17 Q. I think I can find the answer.

18 A. An acre and seven-tenths, something like that.

19 Q. Okay. And where exactly are you planning to construct
20 this new house? Is it on the foundation of the old
21 house?

22 A. Yeah. Yeah.

23 MR. PINNEY:

24 Okay. No further questions, Your Honor.

25

1 HEARING OFFICER BRADY:

2 Mr. Nash, redirect?

3 MR. NASH:

4 Yes.

5 REDIRECT EXAMINATION

6 BY MR. NASH:

7 Q. Vaughn, opposing counsel was asking you about the terms
8 "hook up the electric" versus the terms "run the
9 electric." Do those terms have any different meanings
10 to you?

11 A. No, they don't.

12 Q. As you use those terms, "hook up the electric," "run
13 the electric," does that mean the same thing?

14 A. Yes.

15 Q. Did you mean to imply, when you used those terms, that
16 you know that Clark had to actually run new power
17 lines?

18 A. Well, I was kind of actually under the impression that
19 they weren't going to have to run new power lines,
20 because, I mean, they might have had to - I don't know.
21 There again, I'm not an electrician. I knew there were
22 wires there, and there were poles there.

23 Q. Okay. So, when you said, under questioning here, that
24 it was your idea that you were going to go find out
25 where they were going to run the electric, . . .

1 A. Right.

2 Q. . . . did you mean that you thought you were going to
3 go see where they would have to put new power lines?

4 A. No.

5 Q. Okay.

6 A. I mean, I . . .

7 Q. And, in fact, did Mr. Peyton or anyone at Clark RECC
8 let you in on why they wanted to go there that day?

9 A. Because they wanted to find out where it went or where
10 it, I mean, . . .

11 Q. That's all . . .

12 A. Yeah. I mean, they wanted to find out where they were
13 going to run it, I mean . . .

14 Q. That's all they told you?

15 A. Right.

16 Q. So, if they had any ideas that they would have to run
17 new electric lines, they didn't let you in on that on
18 that day?

19 A. No. No. I mean, I think it was obvious that they were
20 going to have to do some work on it.

21 Q. Okay. You know, no one else here except maybe you and
22 I have seen this land, so let's describe it a little
23 bit better so that everybody can get sort of a picture
24 of it. The Point where your house is is all at about
25 the same level; correct?

1 A. Correct.

2 Q. And how many poles are down on that level?

3 A. On my property or all the way down that bottom?

4 Q. All the way down the bottom there.

5 A. Two on my property and, I guess, two more down at the
6 bottom.

7 Q. Okay. Now, that whole level is also quite a bit above
8 the level of the river; correct?

9 A. Yeah, correct.

10 Q. So you've got the river at one level, and the creek is
11 obviously at the same level as the river?

12 A. Right.

13 Q. Then the level of the Point where your property is and
14 then there's a third level; correct?

15 A. Which is the top of the palisade.

16 Q. And whose property is that up there?

17 A. My borders are Mike Hanley, Mitchell Sidwell, and which
18 Mitchell Sidwell's property really doesn't actually
19 even touch my property. It's just basically Hanley and
20 then the creek, which on the other side of the creek is
21 Pat Sheely.

22 Q. So, when you're telling the Commission that you don't
23 have road access to your property, is that because you
24 don't own any of the property up at that level;
25 correct?

1 A. Right. I don't have any at - I mean - right. At this
2 point in time, I have no road access to my property and
3 that was all up front from day one.

4 Q. Okay. Then up top on the third, the highest, level is
5 that where you have observed one pole? You talked
6 about it going up the palisades?

7 A. Yeah, that's the last pole I ever saw was, from the
8 bottom, I followed the wire up to the top of the
9 palisade and saw the pole at the top and that's as far
10 as I had ever - I didn't know where it went past there
11 and . . .

12 Q. Okay.

13 A. . . . that was part of Todd Peyton coming down, was
14 because they needed to find out where it went.

15 Q. All right. Let's talk about the condition now of the
16 road or the right-of-way down to the Point. Okay? You
17 talked about it starting at Mike Hanley's house up on
18 the highest level; correct?

19 A. Right. Correct.

20 Q. What is the condition, based on your observation of it,
21 of the road from there down to the second level which
22 is the level that the Point is on? What is the
23 condition?

24 A. It's cleared. I mean, there's pictures. It's cleared
25 and you can drive a vehicle to the bottom right now.

1 Q. You've submitted pictures of that with your rebuttal
2 testimony; correct?

3 A. Yeah.

4 Q. Okay. Now, after that cleared section, once you get
5 down to the level of the Point, . . .

6 A. Right.

7 Q. . . . what is the condition of the road or the right-
8 of-way as it leads out to the Point?

9 A. Well, it's grewed up, but, I mean, it's just saplings.
10 I mean, it's not anything that couldn't be . . .

11 Q. Is there a . . .

12 A. There's a really nice trail going down there.

13 Q. Okay. That's a foot trail?

14 A. Foot trail.

15 Q. Is that part cleared?

16 A. Oh, yeah.

17 Q. Okay. But, as far as a road, something the width of a
18 road, is there a recognizable roadbed?

19 A. Yes, sir.

20 Q. And have you also submitted pictures of that?

21 A. Yes, sir.

22 Q. And what would it take to drive a vehicle over that
23 roadbed?

24 A. Well, short of one little ditch that a culvert could be
25 laid in, you could have a vehicle down there within a

1 matter of hours.

2 Q. Would you have to clear some saplings?

3 A. Yeah, a chainsaw would be good and a weed eater.

4 Q. And, to fill in this one ditch?

5 A. Right.

6 Q. And then, after that, you could drive it?

7 A. Yeah. People drove to the Point. I mean, there has
8 been three houses there that's been there for - I've
9 got it Deeded back to 1866. There's been a separate
10 house.

11 Q. Okay. But, other than the last - well, let me ask it
12 this way. How much of that roadbed is actually on your
13 property?

14 A. Well, the last 50 feet, I guess.

15 Q. Okay. All right.

16 A. I mean, once you get to my property, you can't go much
17 further.

18 Q. Okay. Let me ask you a little bit about the obtaining
19 of these permits because you've been questioned on
20 that. When you initially inquired about electrical
21 service, and I'm talking about before you bought the
22 property, was there any talk of the permits?

23 A. No, sir.

24 Q. When did the talk of the permits arise?

25 A. After they went down there and saw what they had gotten

1 themselves into.

2 Q. After the Todd Peyton visit?

3 A. Yeah.

4 Q. And you were then informed that you needed these

5 permits?

6 A. Yes, sir.

7 Q. And did you take some steps towards getting those?

8 A. I got my exemption for having a permit to build in the

9 floodplain because I wasn't in the floodplain. I went

10 and got my composting toilet all but approved from the

11 EPA. Septic systems don't work on the river. They

12 won't - so they thought that was all good. I went and

13 had my - you have a problem with the gray water

14 discharge, which is sink, shower, gray water, and that

15 was all taken care of through water treatment and my

16 biggest problem there was the discharge of it, and I

17 had to purchase a water discharge permit from right

18 here in Frankfort, and I ended up - I could have gone

19 two ways, buy the water discharge permit or irrigate it

20 and keep it on my own property, which I ended up going

21 with keeping it on my own property, which was cheaper,

22 which, having those done, the building permit would

23 have fell in right behind that because that was the

24 prerequisite to getting a building permit, . . .

25 Q. Okay.

1 A. . . . but, there again, I wasn't going to spend \$2,000
2 on a water discharge permit that I couldn't use.

3 MR. NASH:

4 Your Honor, anything else I would ask Mr. Taylor
5 he has already testified to in his direct and
6 rebuttal testimonies, and I don't see any need to
7 go back over it again. I mean, certainly there's
8 a lot of these issues that have been raised on
9 cross that he has already addressed, but I don't
10 see any need in rehashing that. So that's all I
11 would have.

12 HEARING OFFICER BRADY:

13 Good call. Mr. Thomas?

14 MR. THOMAS:

15 I just have a couple of questions that were
16 brought up by Mr. Pinney's cross.

17 RE-CROSS EXAMINATION

18 BY MR. THOMAS:

19 Q. I'm going to show you a document that is a
20 topographical map . . .

21 A. Uh-huh.

22 Q. . . . which was attached. Mr. Pinney asked you some
23 questions about where your house sits. Does that - as
24 an aerial view . . .

25 A. Uh-huh.

1 Q. . . . to the extent you can, can you identify where
2 your property is?
3 A. Right where the X is.
4 Q. Okay. Right where Clark Energy has marked it, so
5 that's an accurate description?
6 A. Pretty much, yeah.
7 Q. And can you show me how you would access your property
8 along this roadbed that you say exists?
9 A. Well, now, I can't - it's right in through here
10 somewhere and right there is that little gully, I would
11 say.
12 Q. Okay. So you're pointing to what appears to be . . .
13 A. Well, I mean, I'm just saying that the first branch
14 that's coming in there is probably that gully that I
15 said where you would have to get over that. Now, if
16 you had a four-wheel drive, you could get over it right
17 now.
18 Q. Okay.
19 A. And then that . . .
20 Q. And that would be coming in. This would be . . .
21 A. I would say this is Hanley's house, . . .
22 Q. Okay.
23 A. . . . and you would have to come down here and drive
24 down that road. It curves once and then twice back
25 around like that and here's the bottom of the hill. It

1 curves back around and, bang, you're there.

2 Q. Okay.

3 A. And, there again, I'm . . .

4 Q. Guesstimating?

5 A. Yeah.

6 Q. I understand.

7 MR. THOMAS:

8 For the record, the witness has pointed to a spot

9 which I will mark with a pen so that we can

10 identify it.

11 Q. And if I could just have you draw on that document

12 where you think . . .

13 A. Where I think?

14 Q. Where you think, to the best of your knowledge . . .

15 A. Okay. You drive right down through here and then back

16 up this hill.

17 Q. Okay. And then it would continue on up to . . .

18 A. Wherever, yeah.

19 Q. Okay. Okay.

20 A. Now, what are you - we're getting at the elevations

21 here? Is that . . .

22 Q. Yes, that's the next question I've got.

23 A. Okay. All of this elevation down through here, which

24 would be - let me move over here.

25

1 HEARING OFFICER BRADY:

2 That's good.

3 A. This elevation right along this river is probably in
4 the floodplain. It's probably actually below what they
5 call the 100-year flood, and, when you actually get to
6 the Point, it rises up gradually but not to the -
7 actually where I'm only 30 feet out of the floodplain,
8 but I'm out of the floodplain. So it takes a gradual
9 slope. All of this is all real level through here, but
10 then right there, right toward the end of the Point, it
11 goes up onto the Point.

12 Q. So, before you get to this rise, your property, the
13 property that you've described, from here over would be
14 considered . . .

15 A. The same level.

16 Q. That's the same level as your residence?

17 A. From here to there flat road.

18 Q. Okay. And is that . . .

19 A. Except for this. I think that's that gully right
20 there.

21 Q. Okay.

22 A. You would have to either throw a culvert in or . . .

23 Q. Now, how much of your property is in the floodplain or
24 is out of the floodplain rather? Is all of your
25 property out of the floodplain?

1 A. Pretty much.

2 MR. NASH:

3 Counsel, could I take a look at that?

4 MR. THOMAS:

5 Yeah.

6 MR. NASH:

7 When you're done, I may want to use it to ask him

8 some questions.

9 A. There was something that was filed that tells you where

10 I'm legally able to build a house on the Point.

11 Q. And that's what I'm getting ready to refer to here.

12 A. There you go.

13 Q. You've anticipated my question.

14 A. I think it says 100 by 100.

15 Q. Okay. So a 100 by 100 section of your house is out of

16 the floodplain?

17 A. Well, is where I can build the house.

18 HEARING OFFICER BRADY:

19 Mr. Nash, pass that over to counsel.

20 MR. NASH:

21 Oh, I'm sorry.

22 A. Yeah. Actually that topo map you've got right there

23 really doesn't do justice as far as elevations.

24 Q. Let me show you another document, then, that may help

25 you with the elevations.

1 A. Okay.

2 Q. Here is a close-up of that same area, . . .

3 A. Uh-huh.

4 Q. . . . the X still indicating where the creek comes
5 around indicating your property.

6 A. Uh-huh. Right. Uh-huh.

7 Q. Does that better reflect the elevations?

8 A. I can't read them, but, I mean, that's the Point right
9 there; yeah.

10 Q. Okay. This says 700.

11 A. I think I'm 562. I think it tells you right here; 592.

12 Q. Okay.

13 A. Anything below 592, and that's what 700?

14 Q. That's 700 at this point.

15 A. Okay.

16 Q. And then your property - my next question would be this
17 document is a letter that you submitted with your
18 testimony and that is a letter from the Natural
19 Resources and Environmental Protection Cabinet; isn't
20 it?

21 A. Yes, sir.

22 Q. And that indicates that a portion of your property,
23 which is 100 by 100 feet, appears to be above the 100-
24 year floodplain?

25 A. Okay.

1 Q. So, based upon this letter, it would appear that the
2 rest of your property would be below the floodplain.
3 A. Okay. I mean, you haven't been there. So, I mean,
4 it's kind of hard to - I guess the other sides of the
5 cliff are in the floodplain, I guess, . . .
6 Q. Okay.
7 A. . . . but the top is not.
8 Q. Okay. Okay.
9 A. But I don't . . .
10 Q. Go ahead and hand that to her so she'll have a copy of
11 that.
12 A. I mean, based on that map, it's all 700 feet, which all
13 of it is out of the floodplain, which that's not
14 correct.
15 MR. THOMAS:
16 I don't have anything else, Your Honor. Thank
17 you.
18 HEARING OFFICER BRADY:
19 Mr. Pinney, do you have questions? Do you want
20 these back? Do you need them?
21 MR. PINNEY:
22 No.
23 HEARING OFFICER BRADY:
24 Mr. Nash, do you want them back? Thank you.
25 Sorry to interrupt the flow. Mr. Pinney, do you

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MR. NASH:

Just very briefly.

REDIRECT EXAMINATION

BY MR. NASH:

Q. Vaughn, you've drawn in pen on this one topographic map . . .

MR. NASH:

And I assume - are you going to make this an Exhibit?

MR. THOMAS:

Yeah, we'll make that an Exhibit. We'll move to make that an Exhibit, if there's no objections.

MR. NASH:

No objection.

Q. But I want the record to be clear about this. This is your best guess at where that road runs?

A. Yeah. Yeah, and that's a pretty good guess, too.

Q. But, I mean, you've not had, obviously, that surveyed or anything.

A. Right.

MR. NASH:

Okay. That's all, Your Honor.

HEARING OFFICER BRADY:

Mr. Thomas?

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MR. THOMAS:

I don't have anything else of Mr. Taylor.

HEARING OFFICER BRADY:

Nothing else. Mr. Pinney?

MR. PINNEY:

No further questions, Your Honor.

HEARING OFFICER BRADY:

Are we finished with Mr. Taylor?

MR. NASH:

I am, Judge. Who wants these?

HEARING OFFICER BRADY:

The Clerk or the Reporter. Mr. Taylor, they have indicated you may step down, sir.

MR. THOMAS:

There were no objections, were there, Mr. Pinney, of making this an Exhibit?

CLARK EXHIBIT 1

HEARING OFFICER BRADY:

All right, Mr. Nash. I guess we're back to you.

MR. NASH:

My next witness is outside. Should I go bring him in?

HEARING OFFICER BRADY:

Please, if you would.

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MR. PINNEY:

Your Honor, may I request a very brief recess,
please?

HEARING OFFICER BRADY:

Sure. How much?

MR. PINNEY:

Oh, three minutes.

HEARING OFFICER BRADY:

Five?

MR. NASH:

No objection.

HEARING OFFICER BRADY:

You can go ahead and get your witness in and be
seated . . .

MR. NASH:

Okay.

HEARING OFFICER BRADY:

. . . and we'll take five.

OFF THE RECORD
WITNESS SWORN

HEARING OFFICER BRADY:

Thank you. Have a seat, please. Mr. Nash?

1 CROSS EXAMINATION

2 BY MR. THOMAS:

3 Q. Mr. Taylor, we haven't met. My name is Brian Thomas,
4 and I represent Clark Energy in this matter. Do you
5 remember giving a verified - well, actually, you gave a
6 deposition, I believe, in this matter in front of a
7 Court Reporter. Do you remember giving that
8 deposition?

9 A. Yes.

10 Q. And, in part of that deposition, you indicated that you
11 had some conversations with Vaughn regarding
12 electricity; is that a correct statement?

13 A. Correct.

14 Q. What was Vaughn's concern with respect to electric
15 service?

16 A. There wasn't any concern. This was just a matter of,
17 when we first started talking about the property, that
18 was one of the questions that I had had.

19 Q. Now, would you classify this property as being remote,
20 in a remote location?

21 A. Yes.

22 Q. Have you ever been able to access the property other
23 than by boat?

24 A. Yeah, you can walk into it.

25 Q. Have you ever walked into it?

1 A. No, sir.

2 Q. Where would you park or where would you stop before you
3 began your walk to that property?

4 A. I wouldn't have any idea.

5 Q. Okay. Have you had an opportunity to view the site?

6 A. Yes.

7 Q. And, while out there, did you have an opportunity to
8 look at any of the poles, electric poles, or the wiring
9 that was attached to those poles?

10 A. Yes, I did.

11 Q. What was the condition of the telephone poles or the
12 electric poles?

13 A. The wiring was down. It looked like it had been maybe
14 a storm or something had knocked it down, but the poles
15 appeared to be in good condition.

16 Q. Did you notice any trees lying on any of the lines?

17 A. No, there was none.

18 Q. Were there any trees growing up into any of the wires?

19 A. Yes, there were.

20 Q. Did you ever have any conversations with anyone at
21 Clark Energy regarding this matter?

22 A. Yes.

23 Q. Do you know who you spoke with?

24 A. I don't remember; no, sir.

25 Q. Can you describe for us the nature of that

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conversation?

A. This was after Vaughn had bought the property a good while, and there was a conversation about that he was telling me that they did not want to put service in, and I called out to talk to someone about that, why and what was the problem.

Q. What was their response?

A. Well, at that point in time, I don't remember the conversation exactly, but they had simply said that they - the comment was made that he had talked to Vaughn about this and that the service was not going to be available or something to that effect.

Q. Did they give you a reason why service would not be available?

A. I don't remember for sure about that. It was access or something of that nature.

Q. During your conversations with Clark Energy, did you ever indicate an intention to possibly airlift materials to the site to allow Vaughn to construct a residence there?

A. Yeah. Certainly.

Q. Why would you have to airlift the materials in?

A. Well, at that time, it was an alternative if the road was not going to be big enough to bring in anything of that nature. Vaughn was talking about a fairly good

1 size trailer and a trailer you couldn't get down any
2 kind of a road unless it was pretty wide.

3 Q. What about - did you also indicate that any building
4 materials would have to be airlifted in?

5 A. I don't remember talking about that. All I talked
6 about, as I remember, was the fact that a trailer - we
7 had talked about airlifting a trailer into it.

8 Q. And how would you achieve that? How would you have it
9 brought in?

10 A. With a helicopter.

11 Q. And could you have gotten it there by boat?

12 A. No.

13 Q. Why not?

14 A. It sits on top of a cliff. So, once you got it - you
15 could get it next to it, but you couldn't get it up the
16 cliff.

17 Q. How far from the water's edge or the top of the river
18 level is this cliff? Where does the . . .

19 A. I'm not a good judge of distances, necessarily, but
20 it's probably at least 50 foot above the water level.

21 MR. THOMAS:
22 I don't have anything further, Your Honor.

23 HEARING OFFICER BRADY:
24 Thank you, Mr. Thomas. Mr. Pinney?
25

1 MR. PINNEY:

2 I have no questions at this time, Your Honor.

3 HEARING OFFICER BRADY:

4 Mr. Nash, any redirect?

5 MR. NASH:

6 Just a couple, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. NASH:

9 Q. So, Mr. Taylor, when you observed the electrical poles
10 on the property and the wires, some of the wires were
11 strung and hanging in the trees or, at least, the trees
12 had grown up to the level of the wires? Is that the
13 way I understand it?

14 A. Correct.

15 Q. And then there were other wires that were down?

16 A. Correct.

17 Q. Certainly, the wires at the end of the pole that used
18 to go to the house were down?

19 A. Yes, they were, very definitely.

20 Q. Were the poles rotten?

21 A. No. It was my observation, when I looked at them, that
22 I just had to assume that the electric company would
23 simply run new wires and bring them in. I looked at a
24 metal tag on the post, and the date on that was recent
25 enough that I didn't figure there would be any problem.

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The poles appeared to be solid, though.
Q. I mean, did they have any green rot growing on them,
the poles, to your observation?
A. No. They were just a standard power line pole or
telephone pole.
Q. Were they standing up straight?
A. Oh, yeah, yeah, yeah, they certainly were.

MR. NASH:

That's all I have, Judge.

HEARING OFFICER BRADY:

Mr. Thomas?

RE CROSS EXAMINATION

BY MR. THOMAS:

Q. Did you see all the poles on the site? How many poles
did you observe when you went to the property?
A. Oh, I think there's three or four of them that I saw.
I'm not sure how many. That part of the property I
didn't follow it back through to where it went to.

MR. THOMAS:

Nothing further, Your Honor. Thank you.

HEARING OFFICER BRADY:

Mr. Pinney?

MR. PINNEY:

Nothing further.

1 HEARING OFFICER BRADY:

2 Mr. Nash?

3 MR. NASH:

4 No. Nothing further.

5 HEARING OFFICER BRADY:

6 Thank you, sir. They've indicated you may step
7 down.

8 A. Thank you.

9 MR. NASH:

10 Should I go get my next witness?

11 HEARING OFFICER BRADY:

12 Please.

13 MR. NASH:

14 Your Honor, this is Steve Slonaker.

15 HEARING OFFICER BRADY:

16 Raise your right hand for me, please.

17 WITNESS SWORN

18 HEARING OFFICER BRADY:

19 Thank you. Have a seat. You may ask, Mr. Nash.

20 The witness, STEVE SLONAKER, after having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. NASH:

24 Q. Sir, will you state your name and spell the last name
25 for the Clerk, please?

1 A. Steve Slonaker. That last name is spelled S-l-o-n-a-k-
2 e-r.

3 Q. Mr. Slonaker, have you previously given your testimony
4 in front of a Court Reporter?

5 A. Yes, I have.

6 Q. And, to your knowledge, has that testimony been
7 transcribed?

8 A. Yes.

9 Q. And do you adopt that testimony today as your direct
10 testimony?

11 A. Yes, I do.

12 Q. Do you have any additions or changes that you wish to
13 make to that testimony?

14 A. No, I don't.

15 MR. NASH:
16 That's all I have, Judge.

17 HEARING OFFICER BRADY:
18 All right. Mr. Thomas?

19 CROSS EXAMINATION

20 BY MR. THOMAS:
21 Q. Is it Mr. Slonaker?
22 A. That's correct.
23 Q. All right. And, if I mispronounce your name, please
24 correct me.
25 A. You did just fine.

1 Q. And, if you don't mind, I'll probably call you Steven,
2 if that's okay.

3 A. That's just fine as well.

4 Q. In the deposition that you gave, you talked about being
5 on the property. How many times would you say you've
6 been on this property commonly referred to as the
7 Point?

8 A. I've been going down there for the past 18-19 years, in
9 that range. It would be hard to give you an exact
10 number. I've gone many, many, many times, sometimes as
11 many as probably 20-30 times a year. So you multiply
12 that by the number of years and, as I'm living on that
13 part of the river now, much more often even now in the
14 last few years.

15 Q. And you've had occasion to actually be on the property
16 that's owned by Mr. Taylor?

17 A. Yes, I have.

18 Q. And, at one time, there were some electric poles that
19 existed or that were on that property?

20 A. Yes, there were.

21 Q. How many poles would you say were there that you
22 observed on a regular basis?

23 A. The poles that I saw, there was approximately four or
24 five poles.

25 Q. And where were those poles located?

1 A. They ran along the property line leading to where the
2 home had been.

3 Q. Would you say that those poles were parallel to the
4 river or were they perpendicular to the river? Did
5 they . . .

6 A. They were parallel to the river.

7 Q. Did you ever see where those poles went to or where was
8 the point of electrical service?

9 A. As far as I saw them, they went to a point where, when
10 I walked into the property, they started, but I never
11 followed the entire line of poles.

12 Q. And over how long a distance would you say those four
13 to five poles ran?

14 A. An eighth of a mile or a quarter of a mile, something
15 like that.

16 Q. What were the condition of those poles?

17 A. Excellent condition.

18 Q. How would you describe or how would you define
19 "excellent condition"?

20 A. They basically looked to me completely unharmed. They
21 were solid. They were in place like the day they had
22 been put in.

23 Q. Was there any growth, brush, plant life, that was
24 growing up around the poles?

25 A. Yes, there was new trees, and that type of thing, that

1 had grown up along the lines of the poles, and that
2 type of thing.

3 Q. Were there any trees that had grown up into the wires
4 that were spanning between the poles?

5 A. There was trees that had grown up and, you know, I
6 didn't look at it that closely, but there are trees, I
7 assume, that probably were touching some of the lines.

8 Q. Do you have any experience in either construction of
9 electrical lines or construction of electrical service,
10 setting poles and attaching electric wire to those
11 poles?

12 A. No, I don't.

13 Q. In your deposition, you state, from what you know of
14 wires and lines, they looked in perfect condition.
15 What is your knowledge of wires and lines?

16 A. Well, just what I have seen from service that runs to
17 property like my own and property everywhere else that
18 you would commonly walk by. The poles, if you were
19 going to somebody's house, looked just like they would
20 look if you were going to your neighbor's.

21 Q. And that was for the four or five poles that you were
22 able to see from the Point or along the Point?

23 A. That's correct.

24 MR. THOMAS:

25 I don't have anything further, Your Honor.

1 HEARING OFFICER BRADY:

2 Thank you. Mr. Pinney?

3 MR. PINNEY:

4 No questions, Your Honor.

5 HEARING OFFICER BRADY:

6 Redirect, Mr. Nash?

7 REDIRECT EXAMINATION

8 BY MR. NASH:

9 Q. The condition of the poles, did you see any rot on the
10 poles?

11 A. None whatsoever.

12 Q. Any green rot growing on the poles?

13 A. No, not at all.

14 Q. When you've gained access to the property over these
15 many years, I assume sometimes you come in by boat.

16 A. Yeah, sometimes and walk in other times.

17 Q. You walk in sometimes?

18 A. Yes.

19 Q. Where do you walk in from?

20 A. The adjacent farm. There's a large farm that a friend
21 of mine owns that's abutting to the property, and we
22 just walk over the hill down to the place where the
23 house had been and where there had been a dock and a
24 stair leading to the dock and all of that.

25 Q. Whose land is that?

1 A. Pat Sheely owns the adjacent farm. It's Cattle Spring
2 Farm.

3 Q. Cattle Spring Farm?

4 A. That's correct.

5 Q. When you walk in through the Sheely property, is it
6 tough to get to the Point?

7 A. Not at all. We always carried our tent and our gear
8 and walked down. Never had a problem one.

9 Q. Do you have to scale up and down cliffs coming in that
10 way?

11 A. No. Nothing but just walking down a path.

12 MR. NASH:

13 That's all, Judge.

14 HEARING OFFICER BRADY:

15 Mr. Thomas?

16 MR. THOMAS:

17 Thank you, Your Honor.

18 RE-CROSS EXAMINATION

19 BY MR. THOMAS:

20 Q. What is the condition of the docks or the stairs that
21 are down there on the property that you say you walked
22 up?

23 A. The stairs that are leading to the dock are metal, and
24 they've rusted, and right now you can still walk down
25 them, but, at this point in time, they should be

1 replaced, or whatever. If they were going to be used
2 frequently, they would have to either be upgraded or
3 changed.

4 Q. Does it extend all the way to the water's edge?

5 A. It goes down and there's probably a 20 foot area that
6 it does not reach completely to the water.

7 Q. When you come in from the Sheely property, what
8 direction are you going in order to get to the Point?

9 A. I'm heading towards the river.

10 MR. THOMAS:

11 Your Honor, if I may, if I - you have those
12 drawings, don't you, ma'am?

13 REPORTER:

14 Yes.

15 Q. I'm going to show you a topographical map. Let me turn
16 it around here so everybody can see it. This X marks
17 the location of Mr. Taylor's property. Where is Ms.
18 Sheely's property in relationship to that? The river
19 is running here.

20 A. Ms. Sheely's property is all this around through here.

21 Q. Okay. So, in order to get from Ms. Sheely's property
22 to Mr. Taylor's property, you actually have to cross
23 Jouett Creek?

24 A. That's correct.

25 Q. How wide is that creek?

1 A. It varies in points. That particular way we went, I
2 would say it's ten feet or fifteen feet.

3 Q. Have you ever driven down from Ms. Sheely's property to
4 the Point?

5 A. We would drive to the back of her farm and just walk
6 down from there.

7 Q. Could you have gotten a vehicle from the back of the
8 farm where you parked to Mr. Taylor's property?

9 A. From her farm, no, you couldn't.

10 MR. THOMAS:
11 I don't have anything further.

12 HEARING OFFICER BRADY:
13 Mr. Pinney?

14 MR. PINNEY:
15 No questions, Your Honor.

16 HEARING OFFICER BRADY:
17 Mr. Nash?

18 MR. NASH:
19 Just one follow-up or maybe two.

20 REDIRECT EXAMINATION

21 BY MR. NASH:
22 Q. The Jouett Creek there, the part that you cross, does
23 it always have water in it?

24 A. No. During the summer, that creek stays primarily dry.
25 Only in the winter months and spring do you have water

1 CROSS EXAMINATION

2 BY MR. THOMAS:

3 Q. Mr. Myers, my name is Brian Thomas, and I'm repre-
4 senting Clark Energy. I've got a few questions of you.
5 How would you describe this piece of property that Mr.
6 Taylor bought?

7 A. Just a piece of ground on the Kentucky River.

8 Q. Would you describe it as remote?

9 A. Somewhat.

10 Q. Are there any other houses built around this property
11 that you can see?

12 A. From the riverbank, there is.

13 Q. But not from standing on his property?

14 A. No. No.

15 Q. Have you had occasion to be on his property?

16 A. Yes.

17 Q. Did you have an opportunity to observe some electrical
18 poles and wires that were located on that property?

19 A. Yes.

20 Q. What is the condition of the poles?

21 A. Fine. There wasn't nothing wrong that I could see with
22 them.

23 Q. Did you do any close examination of the poles?

24 A. Well, to be honest with you, I did because they were in
25 better shape than the ones I've got on my farm.

1 Q. What about the wires that were connected that were
2 spanning between the poles? What was their condition?
3 A. Trees had grown up around them a little bit.
4 Q. Did they look in good shape?
5 A. I couldn't tell, really. I didn't, you know, pay that
6 much attention to that detail.
7 Q. Was there a transformer that you observed on Mr.
8 Taylor's property?
9 A. Yes.
10 Q. What was its condition?
11 A. It was pretty bad. There had been some people using it
12 for target practice.
13 Q. There were bullet holes in it?
14 A. Yes, sir.
15 Q. What kind of undergrowth had grown up into the wires?
16 A. Small saplings.
17 Q. How entrenched were they in the wires?
18 A. Pretty good.
19 Q. Were any of the wires down?
20 A. There were some I remember seeing in the treetops, and
21 I do remember seeing some that were laying on the
22 ground.
23 Q. How many poles would you say you observed on or around
24 Mr. Taylor's property?
25 A. Probably right at half a dozen or so.

1 Q. At some point, did you have an opportunity to observe
2 the property after these poles were cut down?
3 A. Yes.
4 Q. What was the condition of the wire? What did you
5 observe with respect to the wire that had once been
6 hanging in the . . .
7 A. After they had cut them down?
8 Q. After they had cut them down.
9 A. It was laying there in a pile on the ground.
10 Q. Was there also some wires that were still hanging in
11 the trees?
12 A. Not that I noticed after they cut the poles down; no.
13 Q. I want to show you a document that was your deposition,
14 Mr. Myers.
15 MR. THOMAS:
16 Page 11. Page 11, Mr. Pinney.
17 Q. This is a copy that was provided to us by Mr. Taylor's
18 counsel, and this is the deposition of Donald Brent
19 Myers. Do you remember taking that deposition?
20 A. Yeah.
21 Q. On Page 11, Line 9, Mr. Nash asked you the question,
22 "What about any of the wires? Did you observe any of
23 that after they were down?" This answer is, "It seems
24 like I remember there were some coiled up, you know;
25 some still hanging in the trees." Is that an accurate

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statement, the testimony that you gave in your deposition?

A. Yeah, I believe so.

Q. So, when you told me that you don't remember any wires in the trees today, you would say that your deposition is a better recollection of those events than your testimony today?

A. I don't understand what you mean.

Q. Well, you testified just a few minutes ago, after the poles were cut down, there were no wires in the trees.

A. I don't remember seeing any.

Q. Okay. But, in your deposition, you indicate that there were wires hanging in the trees.

A. Because we had been up there recently looking at it.

Q. Pardon?

A. We had been up there recently looking at it.

Q. Okay.

A. That's been awhile back.

Q. Okay. So, if you said it in your deposition, then that's a true statement?

A. Yeah, we had just been down there a day or two before that.

MR. NASH:

Your Honor, this brings up an objection. I've not made this objection to this point, but let me make

1 it now, if I may. You know, opposing counsel is
2 going through and basically reasking the same
3 questions that have already been asked in sworn
4 testimony I guess in the hopes that a witness, you
5 know, in the courtroom today will say something
6 just a little bit different. You know, I'm not
7 going back on my questioning and asking the same
8 questions over again. It's my understanding that
9 the Order prohibits that. We're to delve into new
10 areas. So I would object to reasking the precise
11 same questions that have been asked in deposition
12 testimony.

13 MR. THOMAS:

14 Your Honor, if I may, in a civil proceeding, both
15 parties would have the opportunity to both direct
16 examine as well as cross examine, and your cross
17 examination would include pointing out items that
18 were addressed on the direct examination and
19 that's all that I've done. I'm not trying to
20 belabor the point, and I'm not trying to go
21 through line by line. I'm just picking out points
22 that I would normally cross had I been given the
23 opportunity at the time of the deposition.

24 HEARING OFFICER BRADY:

25 I'm going to overrule the objection. I sense that

1 there is perhaps an impeachment base to the cross
2 examination, and impeachment is always appro-
3 priate. Whether there is or not, I'm going to let
4 him handle it that way, and I'll allow you the
5 same latitude should you need it, Mr. Nash. You
6 may ask.

7 MR. THOMAS:
8 I have nothing further, Your Honor. Thank you.

9 HEARING OFFICER BRADY:
10 Mr. Pinney?

11 MR. PINNEY:
12 No questions, Your Honor.

13 HEARING OFFICER BRADY:
14 Mr. Nash?

15 MR. NASH:
16 Yes, Your Honor, just a few here. Do we have the
17 original of his testimony? It was . . .

18 HEARING OFFICER BRADY:
19 It's in the record, because I read it.

20 MR. NASH:
21 Is the record here in the courtroom?

22 HEARING OFFICER BRADY:
23 I don't think so. I didn't bring it.

24 MR. NASH:
25 Is there a way that we could get it in the

1 courtroom? The reason I ask, Your Honor, is
2 there's one photograph that this witness took, the
3 only original of which is filed in with the
4 original testimony. I want to ask him questions,
5 but I'm also going to need that for later on
6 cross. So I can go ahead now, but, at some point
7 today, could we get that brought into the
8 courtroom?

9 HEARING OFFICER BRADY:

10 Sure. Sure.

11 MR. NASH:

12 Okay.

13 HEARING OFFICER BRADY:

14 Absolutely.

15 REDIRECT EXAMINATION

16 BY MR. NASH:

17 Q. Brent, do you remember this photograph I'm talking
18 about that you attached as an Exhibit to your sworn
19 statement?

20 A. Yes, sir.

21 Q. This is a photograph you took; correct?

22 A. Yes, sir.

23 Q. And it shows one of the electric poles in the
24 photograph. Just for clarification purposes, when you
25 took this photograph, the pole, obviously, is still

1 standing.

2 A. Uh-huh.

3 Q. Were you aware of any dispute at the time that you took
4 this photograph between Vaughn and Clark RECC?

5 A. No, sir.

6 Q. Was the purpose of taking this photograph to show the
7 electric pole in some way?

8 A. No. I just thought it made a good picture of him and
9 his boy standing with the river for a background.

10 Q. And it was just fortuitous that the pole was in the
11 picture?

12 A. Yeah. Yeah.

13 Q. It was just by chance?

14 A. Yeah.

15 Q. Okay. Prior to the poles being cut down, had you
16 helped Vaughn in any sort of site preparations? Had
17 you done any work around where the house was going to
18 be built?

19 A. Yeah, we cleared some undergrowth out and was trying to
20 find a place where it would be most suitable for a
21 foundation. Like I say, it's on top of bedrock, and,
22 you know, we was just trying to locate where the most
23 feasible spot for a house would be.

24 Q. Okay. And did you ever observe any metal tags on these
25 poles?

1 A. Seems like, you know, there was like a little - when
2 they come out and do their inspections, they usually
3 nail one to it. That's what they do down where I live
4 and I remember seeing the little shiny - like I say, I
5 didn't pay that much attention to detail, but there was
6 a sticker on there of some sort or a round keyhole
7 shape type sticker.

8 Q. And that's when the poles were still standing?

9 A. Yeah.

10 MR. NASH:

11 Okay. That's all I have, Judge.

12 HEARING OFFICER BRADY:

13 Thank you. Mr. Thomas?

14 MR. THOMAS:

15 I don't have anything further.

16 HEARING OFFICER BRADY:

17 Mr. Pinney?

18 MR. PINNEY:

19 Nothing further, Your Honor.

20 HEARING OFFICER BRADY:

21 All right, sir. You may step down, sir.

22 A. Okay.

23 MR. NASH:

24 Your Honor, I have one more witness, and I will
25 get her in before noon here. So I may be able to

1 quit . . .

2 HEARING OFFICER BRADY:

3 All right, sir.

4 WITNESS SWORN

5 HEARING OFFICER BRADY:

6 Thank you. Have a seat, please. You may ask, Mr.
7 Nash.

8 MR. NASH:

9 Thank you, Judge.

10 The witness, CHERI KIRKWOOD, after having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. NASH:

14 Q. Will you state your name and spell it, please, for the
15 Clerk?

16 A. Cheri, C-h-e-r-i, Kirkwood, K-i-r-k-w-o-o-d.

17 Q. And, Ms. Kirkwood, you have previously testified before
18 a Court Reporter; correct?

19 A. Yes.

20 Q. And, to your knowledge, that testimony has been
21 transcribed?

22 A. Yes.

23 Q. And do you adopt today that testimony as your direct
24 testimony?

25 A. Yes.

1 Q. Do you wish to make any changes or additions to that
2 testimony?

3 A. No, I don't.

4 MR. NASH:

5 Pass the witness, Your Honor.

6 HEARING OFFICER BRADY:

7 Thank you. Mr. Thomas?

8 MR. THOMAS:

9 I don't have any questions of this witness, Your
10 Honor.

11 HEARING OFFICER BRADY:

12 Mr. Pinney?

13 MR. PINNEY:

14 No questions, Your Honor.

15 MR. NASH:

16 That was easy.

17 HEARING OFFICER BRADY:

18 I believe that does it. You're free to step down.

19 A. Thank you.

20 HEARING OFFICER BRADY:

21 Thank you. Do you have more?

22 MR. NASH:

23 Your Honor, we submitted the direct testimony of a
24 Roger Tuttle and that would be the last of our
25 witnesses. He is working today, and, frankly, his

1 testimony is duplicative of the others, and I
2 didn't see any real need in bringing him today.
3 If need be, I will actually even withdraw his
4 testimony as being duplicative or submit it
5 without cross examination for what it's worth,
6 Judge.

7 MR. THOMAS:

8 And, Your Honor, we would have had no cross
9 examination of Mr. Tuttle anyway. So we would
10 have no objection to his testimony being admitted
11 as part of this proceeding.

12 MR. NASH:

13 But let me state for the record, Judge, that we've
14 got the situation of the two witnesses that they
15 submitted the testimonies of today who I assume
16 are not here for cross examination today. I think
17 that those witnesses should be subjected to cross
18 examination, and I don't want to, by offering Mr.
19 Tuttle into the record, waive my objection to
20 their witnesses, and, if, by doing that, it would,
21 I would not offer Mr. Tuttle's testimony and would
22 withdraw it because of the lack of counsel to have
23 cross examination of Mr. Tuttle.

24 HEARING OFFICER BRADY:

25 Any change in what you told me?

1 MR. THOMAS:

2 No, Your Honor.

3 HEARING OFFICER BRADY:

4 Okay. Then Mr. Tuttle stays in, but you have not
5 waived any objection to the two that are mentioned
6 by motion this morning?

7 MR. NASH:

8 Correct.

9 HEARING OFFICER BRADY:

10 Fair enough. Does that, then, complete your case,
11 Mr. Nash?

12 MR. NASH:

13 Those are all the witnesses whose testimony we
14 submitted on direct, Judge, and, yes, it does.

15 HEARING OFFICER BRADY:

16 All right. Complainant rests. Beautifully timed,
17 six minutes till noon.

18 MR. NASH:

19 I planned it that way all along, Judge.

20 MR. THOMAS:

21 We had to work out some things beforehand so I
22 didn't run over, Judge.

23 HEARING OFFICER BRADY:

24 I was going to say, you know, being one, I love
25 lawyers, but the only thing they can't do is

1 estimate the length of time it takes to put on a
2 hearing. Let me ask this, Mr. Thomas. How many
3 witnesses do you plan to put on?

4 MR. THOMAS:

5 Four, Your Honor, and those will be the three
6 direct testimonies that we originally filed,
7 Shannon Messer, James Maynard, and Todd Peyton,
8 and also Scott Sidwell who was one of the rebuttal
9 witnesses.

10 HEARING OFFICER BRADY:

11 Now, I'll ask you what I just said lawyers
12 couldn't do. What's your guess of how long it'll
13 take you to present those four witnesses?

14 MR. THOMAS:

15 Well, Your Honor, I . . .

16 HEARING OFFICER BRADY:

17 Of course, and I know that doesn't depend on you
18 but . . .

19 MR. THOMAS:

20 I think it's all going to depend on Mr. Nash.

21 MR. NASH:

22 Yeah.

23 MR. THOMAS:

24 It depends on what kind of cross examination he
25 has prepared for them. Of course, we will follow

1 the same procedures in just having them confirm
2 their testimony, but I would say a couple of
3 hours.

4 HEARING OFFICER BRADY:

5 Mr. Nash, this in no way limits you, but, inasmuch
6 as you're familiar with their direct, have you got
7 any gut feelings as to how long it would take you
8 to get through with their witnesses?

9 MR. NASH:

10 I think we did mine here in about an hour and
11 forty-five minutes. We think we can get theirs
12 in, in that same amount of time, if not less.

13 HEARING OFFICER BRADY:

14 What I'm thinking is, then, if we come back at
15 1:00 then that, given two hours, is 3:00, even two
16 hours and a half is 3:30. Is that within
17 reasonable expectation of everybody as to how long
18 it might take to finish this?

19 MR. THOMAS:

20 Yes, Your Honor, I believe so.

21 MR. NASH:

22 It is, and one thing I did want to ask you about
23 is, and it wasn't, I don't think, addressed in the
24 pretrial Order, I have prepared a brief five or
25 ten minute closing statement. Do you entertain

1 those, or do we just finish with the witnesses and
2 quit?

3 HEARING OFFICER BRADY:

4 Traditionally, I do not. I might permit them if
5 you all requested them but traditionally not. I
6 frequently - and I can't remember the procedural
7 Order in this case, Mr. Pinney, - I frequently
8 require simultaneous posthearing memos which are
9 essentially in the nature of a written closing
10 argument.

11 MR. NASH:

12 And you have in this case, I'll tell you. The
13 Order reflects that.

14 HEARING OFFICER BRADY:

15 The Order does that?

16 MR. PINNEY:

17 It gives them the opportunity to file a brief 15
18 days after the filing of the transcript.

19 MR. THOMAS:

20 Yes, Your Honor.

21 HEARING OFFICER BRADY:

22 And I probably will, then, request those in
23 writing. So I would be inclined not to do oral
24 closings.

25

1 MR. NASH:

2 Okay. Well, if I had to choose between an oral or
3 a written closing, I would prefer a written
4 closing, Judge.

5 HEARING OFFICER BRADY:

6 That doesn't surprise me. I would have, too, and
7 the only question about timing was not to say that
8 you would be limited but to decide whether we had
9 30 minutes for lunch or an hour. Now, that's what
10 that was all about.

11 MR. NASH:

12 You know, frankly, I could do 30 minutes or an
13 hour. I probably won't go to lunch anyway.

14 HEARING OFFICER BRADY:

15 Well, why don't we take an hour?

16 MR. PINNEY:

17 I have no objection to that whatsoever, Your
18 Honor.

19 HEARING OFFICER BRADY:

20 Then it's about four minutes until noon. Let's
21 recess and reconvene at one o'clock.

22 MR. NASH:

23 Thank you, Your Honor.

24 HEARING OFFICER BRADY:

25 Thank you.

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HEARING OFFICER BRADY:

Let the record show that all parties and all counsels have returned and, Mr. Thomas, I believe we are to Clark Energy Cooperative's response, if you care to make one.

MR. THOMAS:

Your Honor, first, before we bring on any witnesses, I would like - in the normal practice, this would be the point where a motion for a directed verdict would be made. I do not know if it's the position of the Commission to do so, but, in response to two Orders that were entered, I would like to, if the Court would entertain, make that argument. I don't know if the Court wants to do that or . . .

HEARING OFFICER BRADY:

About a directed verdict?

MR. THOMAS:

About a directed verdict.

HEARING OFFICER BRADY:

A man after my own heart, you do know how to practice, and what I will tell you is it's timely made, and I will take it under consideration. In the meantime, present your case.

1 MR. THOMAS:

2 Thank you. We would call Scott Sidwell.

3 HEARING OFFICER BRADY:

4 All right, sir. Raise your right hand for me,
5 please, sir.

6 WITNESS SWORN

7 HEARING OFFICER BRADY:

8 Thank you, sir. Have a seat, please. You may
9 ask, Mr. Thomas.

10 MR. THOMAS:

11 Thank you, Your Honor.

12 The witness, SCOTT SIDWELL, after having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q. Could you please state your name for the record, sir?

17 A. Scott Sidwell.

18 Q. And are you an employee of Clark Energy Cooperative?

19 A. Yes, I am.

20 Q. On July 5 of this year, 2001, did you sign a Verified
21 Rebuttal Testimony that was presented to the Public
22 Service Commission with respect to this case?

23 A. Yes, I did.

24 Q. Did you remember having an opportunity to review the
25 questions and answers that were provided in that

1 document?
2 A. Yes, I did.
3 Q. Do you hereby wish to adopt that Verified Testimony as
4 your testimony here today?
5 A. Yes, I do.
6 Q. Do you have any additions, corrections, or deletions
7 that you wish to make to that testimony?
8 A. No, I don't.
9 MR. THOMAS:
10 Judge, with that, I would ask that it be admitted
11 and pass the witness to Mr. Nash.
12 HEARING OFFICER BRADY:
13 Thank you. Mr. Nash, you may cross.
14 MR. NASH:
15 Thank you, Judge.
16 CROSS EXAMINATION
17 BY MR. NASH:
18 Q. Mr. Sidwell, my name is Patrick Nash, and I represent
19 Vaughn Taylor in this case. Are you any relation to
20 Mitchell Sidwell?
21 A. Yes, cousins.
22 Q. You're cousins?
23 A. Yeah.
24 Q. And is that the same Mitchell Sidwell whose affidavit
25 was submitted this morning?

1 A. That's correct.

2 Q. Did you obtain that affidavit from him?

3 A. No, sir.

4 Q. Okay. Mr. Sidwell, I've just got a very few questions
5 for you. You've met Vaughn Taylor before; correct?

6 A. No, sir.

7 Q. You've spoken with him?

8 A. Yes, sir, on the phone.

9 Q. When you spoke with him on the phone, did you tell him
10 that electrical service should be available to his
11 property?

12 A. Mr. Taylor told me that there was an old power line
13 there, and I told him that probably would not be a
14 problem if there was existing service there.

15 Q. Okay. And you told him that so long as he complied
16 with your normal prerequisites for service?

17 A. To come in and sign up.

18 Q. Right.

19 A. That would be correct.

20 MR. NASH:
21 That's all I have, Judge.

22 HEARING OFFICER BRADY:
23 Mr. Pinney?

24 MR. PINNEY:
25 No questions at this time.

1 HEARING OFFICER BRADY:

2 Redirect, Mr. Thomas?

3 MR. THOMAS:

4 Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. THOMAS:

7 Q. Mr. Sidwell, did you know what area Mr. Taylor was
8 talking about when he asked you if service would be
9 available?

10 A. Yes, I knew what area it was; yeah.

11 Q. Did you know the exact location of the piece of
12 property?

13 A. No.

14 Q. How was it, then, that you were able to tell him that
15 it would be no problem getting service?

16 A. I only told him that I knew we served the area. I knew
17 there were power lines in the area, and he had told me
18 there was an existing line there and, from that, that
19 was what I said.

20 Q. So the reason you said that you could provide service
21 is because that was in Clark Energy's service area?

22 A. That's correct.

23 MR. THOMAS:

24 I don't have anything further, Judge.
25

1 HEARING OFFICER BRADY:

2 Mr. Nash?

3 MR. NASH:

4 Nothing further.

5 HEARING OFFICER BRADY:

6 Mr. Pinney?

7 MR. PINNEY:

8 No questions, Your Honor.

9 HEARING OFFICER BRADY:

10 I believe that means you may step down, sir.

11 A. Thank you.

12 HEARING OFFICER BRADY:

13 Thank you.

14 MR. THOMAS:

15 Next, Your Honor, I would call Shannon Messer.

16 HEARING OFFICER BRADY:

17 All right, sir. Raise your right hand.

18 WITNESS SWORN

19 HEARING OFFICER BRADY:

20 Thank you. Have a seat, please. Mr. Thomas?

21 MR. THOMAS:

22 Thank you, Your Honor.

23

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1 Q. Before you executed that document, did you have an
2 opportunity to read the questions and review the
3 answers that you provided with respect to that
4 document?

5 A. Yes, I did.

6 Q. And that document was executed by you?

7 A. Yes.

8 Q. And it has also been tendered to the Public Service
9 Commission?

10 A. Yes, it has.

11 Q. Do you wish to adopt that testimony as your own here
12 today?

13 A. Yes.

14 Q. Are there any additions, corrections, or deletions that
15 you wish to add to either of those testimonies?

16 A. The only thing that I would add is that, after hearing
17 the discussion and some of the filed matters regarding
18 the floodplain, to me, that just underscores some of
19 the inaccessibility issues regarding this whole matter.

20 HEARING OFFICER BRADY:

21 Mr. Thomas, I'm going to take that as a statement
22 that he might make on cross or redirect, . . .

23 MR. THOMAS:

24 Understood, Your Honor.
25

1 HEARING OFFICER BRADY:

2 . . . but I don't see that it would necessarily
3 change.

4 MR. THOMAS:

5 I understand, Your Honor. I would pass the
6 witness to Mr. Nash.

7 HEARING OFFICER BRADY:

8 Thank you. Mr. Nash?

9 MR. NASH:

10 Yes. Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. NASH:

13 Q. Mr. Messer, we met the other day. You know I represent
14 Vaughn Taylor.

15 A. Right.

16 Q. You yourself have never actually been out to the Point
17 or have you?

18 A. Not to the Point; no.

19 Q. How much of this power line have you personally had a
20 look at?

21 A. I've seen the portion on the Hanley and I only went a
22 very short distance across the fence, you know, from
23 the Hanley property there at the edge of his field.
24 Todd Peyton, who had accompanied me, he's the one on
25 whose report he provided since he looked at the entire

1 site. I did not go down to the Point myself.

2 Q. Todd Peyton is here, and I assume he's going to
3 testify; correct?

4 A. That's correct.

5 Q. Okay.

6 A. I wasn't dressed for the occasion.

7 Q. Okay. In the Interrogatories, I recall that, according
8 to Clark's account, there were eight poles in this
9 power line; is that accurate?

10 A. I believe that's the case all together; yes.

11 Q. Okay. And would that be from the Point all the way up
12 to where?

13 A. That would be all the poles that are retired as part of
14 the old abandoned power line.

15 Q. Okay. Now, you say you've seen the first couple of
16 poles in the line?

17 A. I think the first two or three. I remember the poles
18 that were in Hanley's field, . . .

19 Q. Right.

20 A. . . . and I only went a short distance beyond that.

21 Q. Okay. How many poles are in Hanley's field?

22 A. I can't remember how many. I think there was one or
23 two that was part of the overall retirement. I
24 remember one distinctly.

25 Q. Now, is one of the poles the pole that carries the

1 electricity to Mr. Hanley's house?
2 A. No.
3 Q. Is there a pole that carries electricity to Mr.
4 Hanley's house?
5 A. Yes, there is there. The old abandoned power line was
6 disconnected at the point where Mr. Hanley receives his
7 electric service.
8 Q. Uh-huh.
9 A. The old abandoned power line ran approximately 850 feet
10 past Mr. Hanley's house through an open field.
11 Q. To a pole?
12 A. To the last pole in the field, and just past the pole
13 was the fence, and across the fence was the woods, and
14 then shortly beyond that distance is where you started
15 down the cliffs and the bluffs leading down to the
16 river.
17 Q. Okay. So the first pole in the line at the edge of the
18 field, is that a cleared field? I mean, can you drive
19 up to that pole?
20 A. Yes. Yes, you can there.
21 Q. Okay.
22 A. I think there's a gate you had to go through, but, yes,
23 it's . . .
24 Q. Right.
25 A. . . . a grassy field.

1 Q. Right. Yeah. We've heard about the gate. So the pole
2 before that, the one that supplies the electricity to
3 Mr. Hanley's, is it of the same vintage as the other
4 poles in the line?

5 A. No, I would say not. Based on my recollection, that
6 pole probably had been changed out just during the
7 normal course of service through the years, . . .

8 Q. Okay.

9 A. . . . however long electric service has been available
10 at that house.

11 Q. All right. So the first pole in the, I'll call it, the
12 Vaughn Taylor line or the retired line . . .

13 A. Uh-huh.

14 Q. . . . is accessible by a vehicle?

15 A. Yes.

16 Q. Okay. And then, after that, it's the poles after that
17 that it's your all's contention that are not accessible
18 by a vehicle; correct?

19 A. That is correct.

20 Q. Okay. All right.

21 MR. NASH:

22 Let me, just for verification sake, because I
23 don't think this has ever been done for the
24 record, but, Your Honor, if I may show the
25 witness.

1 Q. We've already talked about this application for
2 membership of electric service that's been filed of
3 record . . .
4 A. Uh-huh.
5 Q. Just to verify for the record, is that Clark RECC's
6 application?
7 A. Membership application, yes, it is.
8 Q. Okay. Thank you. All right. Now, Clark's position,
9 as I understand it, is that you all need better access
10 than currently exists in order to have a power line;
11 correct?
12 A. Correct.
13 Q. A road access is what you want; right?
14 A. That would be preferable; yes. That is reasonable
15 access; yes.
16 Q. Do you have to have a road?
17 A. What the administrative regulation requires is that you
18 need to have reasonable access in order to be able to
19 install, operate, maintain a power line, plus be able
20 to read the meter. Any electric utility, any utility,
21 if you're not able to use your equipment in order to
22 transport materials, be able to operate the facilities,
23 and maintain the facilities, and you certainly don't
24 have any access to use your equipment, AKA trucks, in
25 order to read the meter, then, if you're barred from

1 that, we would not regard that as reasonable access;
2 no.

3 Q. Okay. But my question is, do you need a road?

4 A. To use those implements, yes, we would need some access
5 to . . .

6 Q. Okay. On a power line, and let's talk about the Vaughn
7 Taylor power line, where does the road have to run?
8 Does it have to be right next to every single pole?

9 A. What we would want to do in order to be able to use
10 those poles and equipment, when our folks first met
11 with Mr. Taylor, when Mr. Peyton first met with Mr.
12 Taylor, it was widely understood that the old power
13 line had been abandoned and had been in a state of
14 disrepair for many years. We didn't even know that it
15 was even there, and it was everyone's common knowledge
16 that, before we could extend electric service for his
17 proposed residence, that we needed some means of access
18 in order to even get to the residence. By virtue of
19 the fact that we needed access to the residence and we
20 had to build a power line, it stood to good reason that
21 we were going to be using the road to provide us the
22 access that we needed to construct a new power line
23 adjacent to the road leading to his residence.

24 Q. Okay. I understand that's your position, but my
25 question is this; do you have to have a road beside

1 every pole in a power line?

2 A. We're going to seek to put it on the road wherever we
3 can; yes.

4 Q. But is that a requirement?

5 A. It is a requirement if you need access.

6 Q. So do you have to have a road next to every pole to get
7 access to it?

8 A. We're going to try to be adjacent to the road wherever
9 we can.

10 Q. I know that's your preference, okay, but my question is
11 not what's your preference. My question is what is the
12 necessity. Do you need to have every pole in a power
13 line next to a road?

14 A. Specifically, to answer your - I think the gist of your
15 question is, can you get your equipment to a pole other
16 than by a roadside? Certainly, if there's a pole
17 adjacent to your house, behind your home, someplace
18 where, through the vast course of day-to-day
19 operations, you can reasonably expect to get your
20 equipment to a pole, you would not need a road. The
21 issue is can you reasonably expect to put your
22 equipment to maintain and operate a power line when you
23 can't get the equipment to it.

24 Q. Okay. So your answer is you don't need a road as long
25 as it's clear enough to drive to the pole?

1 A. I need permanent access to get to those facilities. I
2 need a reasonable access to get to those facilities,
3 and, going down over the cliffs or bluffs, there's no
4 way that I have access either for our meter readers,
5 our equipment, our line construction, nothing that we
6 have.

7 Q. Now, that's to the poles; correct? You're talking
8 about access to the poles?

9 A. To the poles and the line and the service and the
10 meter.

11 Q. So does the road have to run directly underneath the
12 line as it goes from pole to pole? Do you have to have
13 that?

14 A. What we would want to do is have the poles adjacent to
15 where we can easily access it with our equipment. We
16 would certainly love to have the line accessible to our
17 bucket equipment so that, if there's any repairs that
18 had to be made in the conductor itself, we would have
19 access to that, because obviously you wouldn't be able
20 to climb in order to repair the conductor in midspan
21 without having your equipment there.

22 Q. Okay. So, again, is it a requirement to have a road
23 running underneath all spans of power line?

24 A. It is a requirement that we have some means of access.
25 If it's a flat, dry field, if it's a road, if we have a

1 reasonable prospect of being able to get our equipment
2 there to construct and maintain it, we'll take it.

3 Q. So, again, what you need is a cleared area?

4 A. What I need is a permanent cleared, well-maintained
5 area.

6 Q. Okay. And, of course, you need access to the meter,
7 you said?

8 A. Uh-huh.

9 Q. The meter, I assume, is usually at the actual
10 termination point of the service.

11 A. The meter would be on the side of the premises.

12 Q. Okay. So you need to be able to get to the house?

13 A. You have to read the meter.

14 Q. At the house?

15 A. Uh-huh.

16 HEARING OFFICER BRADY:

17 The meter would be where?

18 A. The meter would be on the side of the house.

19 HEARING OFFICER BRADY:

20 On the side of the house. All right.

21 A. That's where the customers typically install their
22 meter base; yes.

23 HEARING OFFICER BRADY:

24 By the way, I've been meaning to tell you all, and
25 I noticed Mr. Messer look at me a minute ago, most

1 of the time I'm not looking directly at the
2 witness, and I don't want anybody to think I'm not
3 paying attention. I'm watching on these monitors.

4 A. So have I.

5 HEARING OFFICER BRADY:

6 So I'm paying attention. I'm just looking at a
7 monitor. All right. Thank you, Mr. Nash.

8 Q. How often does Clark check those meters?

9 A. Once a month.

10 Q. Once every . . .

11 A. We're reading them once a month; yes.

12 Q. They're read once a month?

13 A. Uh-huh.

14 Q. Okay.

15 A. And, beyond that, there's the two year system
16 inspection that we're required to do as well.

17 Q. Okay. Now, how long have you been with Clark?

18 A. Since March, 1987.

19 Q. When did it become a prerequisite for service at Clark
20 to have either a road or a cleared area around every
21 pole and underneath every line?

22 A. All that we are doing - I think the way the question is
23 framed, what we're asking for is reasonable access to
24 the facilities, and there's no way into this particular
25 location. In order to get the equipment that we need

1 to build and operate and maintain a power line plus
2 read that meter, you have to have vehicles. You have
3 to have bucket trucks. You have to have line trucks,
4 all the equipment that we need. In order to get to
5 this particular locale, you're going to have to have a
6 road in order to traverse that terrain and reach that
7 site.

8 Q. Okay. My question is, when did that become a
9 requirement?

10 A. I don't understand your question.

11 Q. Well, these power lines were there; were they
12 not, . . .

13 A. Uh-huh.

14 Q. . . . and poles?

15 A. Uh-huh.

16 Q. They were Clark's power lines and poles?

17 A. Uh-huh.

18 Q. They went down over a cliff, as you all have said?

19 A. Uh-huh.

20 Q. So, obviously, when they were put there, there was not
21 a road or a cleared area where a truck could drive
22 underneath the lines.

23 A. Right.

24 Q. So, at some point, Clark did it without that. When did
25 it become a prerequisite? When did Clark start

1 requiring that?

2 A. Well, it's obvious that this line was probably built in
3 the 1960s, so I can't vouch for whatever was, you know,
4 done in the 1960s. There's no one at Clark there today
5 who was working in the 1960s. All that I can tell you
6 is that, during my working career and my tenure at
7 Clark, is that anything that we build in order to gain
8 access to that customer's premises it's got to be
9 accessible to our trucks and our equipment.

10 Q. So the answer is you don't when it became a
11 prerequisite?

12 A. No. It's just common knowledge, I think, among any
13 utility within the purview of their existing line
14 extension tariffs and within the purview of the
15 administrative regulation for which we all operate
16 under, you have to have a means by which to take your
17 vehicles and your equipment and your people in order to
18 operate and maintain a power line. We don't do it with
19 mules any more, and we certainly can't float them down
20 on the river to do that.

21 Q. You can't or you don't any more? I mean, at some - do
22 you know how these poles were put in?

23 A. You're asking me to speculate how they were put in.

24 Q. No, I don't want you to speculate. I'm asking do you
25 know.

1 A. No.

2 Q. Okay. So a person in Clark's area - you all have
3 areas; right? Areas of Kentucky that you service?

4 A. Right. Each utility under Commission regulation has a
5 specific territorial area that they're required to
6 serve.

7 Q. Right. So, in Clark's territory, if a person does not
8 have a road into their home or if they just go in by a
9 foot path through the woods, they can't get electric?

10 A. We have to have a means by which to access that meter;
11 that's correct.

12 Q. So that person, if it's just a foot path into their
13 house, they can't have electric?

14 A. No. We're not going to provide something that we just
15 don't have access to read the meter with . . .

16 Q. Okay.

17 A. . . . or to use our facilities with.

18 Q. And, if a person had electric, like the person who
19 lived at the Point at a time before this was required,
20 is their electric then cut off at some point in time?

21 A. The way the Commission regulation reads it is any time
22 a customer neglects or refuses to provide reasonable
23 access for a utility, they can not only refuse initial
24 service but they could terminate existing service. In
25 this particular matter, that was a moot point because

1 the old cabin, by anyone that I've talked to, burned
2 down over 30 years, and the line was apparently
3 abandoned and forgotten in place. Our folks, to the
4 best of our knowledge, had no knowledge that it was
5 even there. So, you know, it was already, you know,
6 gone at that point. There wasn't any existing service
7 to terminate under that prerequisite that you're trying
8 to draw an inference to. There wasn't any existing
9 service available.

10 Q. Persons who live in remote locations like this, . . .

11 A. Uh-huh.

12 Q. . . . is it Clark's policy to require that person to
13 bear the expense of creating a road, building a road,
14 and paying for the poles and wires?

15 A. What they're required to do, under tariff and under
16 regulation, is there's a prescribed line extension
17 cost, which, you know, I think that's well defined.
18 We're not going to build a road in order to build a
19 power line to a customer under that tariff. Our
20 business is constructing and maintaining power lines;
21 not building and maintaining roads to provide access to
22 property.

23 Q. And I know you've estimated the cost in this case . . .

24 A. Uh-huh.

25 Q. . . . of just the power line as somewhere between

1 \$17,000 and \$22,000; correct?

2 MR. THOMAS:

3 Your Honor, I would like to object to any line of
4 questioning along those lines. Our firm received
5 a telephone call from Mr. Nash inquiring about
6 charges in discussion of possible settlement.
7 Those figures were provided to Mr. Messer and to
8 Mr. Rose in response to his request with respect
9 to what it would cost if Mr. Taylor would provide
10 that service. I think that it goes outside the
11 scope of - it tends to taint the issue as to
12 whether or not there's access. Mr. Taylor has
13 made some inferences that the reason that we
14 refused service is because we wanted to get this
15 high charge. The manner in which this was
16 provided was merely for settlement purposes and
17 not for anything of any substance or issues that
18 are before this Court.

19 HEARING OFFICER BRADY:

20 Mr. Nash?

21 MR. NASH:

22 A couple responses, number one, I'm kind of glad
23 to hear him say that because that was our
24 position, that we asked for a settlement and this
25 is what we got back. However, Mr. Messer's

1 subsequent testimony has been that that wasn't a
2 settlement proposal, that it was merely them
3 quoting the cost, their normal tariffed cost.
4 That's response number one. Response number two
5 is they filed it of record.

6 MR. THOMAS:

7 Actually, . . .

8 MR. NASH:

9 It was in Mr. Messer's rebuttal testimony.

10 MR. THOMAS:

11 Actually, Your Honor, it was first attached to
12 testimony that Mr. Taylor gave and he only gave
13 one of the two memos that Mr. Messer had prepared
14 for his counsel which we forwarded to Mr. Nash
15 merely for the purposes of settlement discussion.

16 HEARING OFFICER BRADY:

17 Is it a tariffed cost?

18 MR. THOMAS:

19 Yes, it is. It's a line extension charge.

20 MR. NASH:

21 According to Clark.

22 HEARING OFFICER BRADY:

23 Mr. Pinney, is it a tariffed cost?

24 MR. THOMAS:

25 Your Honor, it is actually, if I may - Mr. Pinney,

1 I don't know how, but it actually came out of the
2 document that's filed with the Public Service
3 Commission under Clark's tariff rates and line
4 extension costs.

5 HEARING OFFICER BRADY:

6 Those figures?

7 MR. THOMAS:

8 Yes.

9 HEARING OFFICER BRADY:

10 Then, to the extent that it's a tariffed cost, I'm
11 going to let it in. The question is what use is
12 then made of it.

13 MR. NASH:

14 And it's already in the record.

15 HEARING OFFICER BRADY:

16 So, I suppose, technically, Mr. Thomas, I have
17 denied your motion.

18 MR. THOMAS:

19 Thank you, Your Honor.

20 HEARING OFFICER BRADY:

21 Mr. Nash?

22 Q. The cost per your all's estimate, just for the lines
23 and the poles, is between \$17,000 and \$22,000; correct?

24 A. Under tariff, in order to extend service to Mr.
25 Taylor's residence, that would be our cost under that

1 tariff to provide service to him.

2 Q. And that doesn't include any cost to buy an easement?

3 A. No, it does not.

4 Q. Or build a road?

5 A. No, it does not.

6 Q. Or clear the land?

7 A. Clear the land?

8 Q. Clear the land, clear it.

9 A. We would only be cutting what trees would be incidental
10 for the power line construction itself; not including
11 any clearing that would be required just to provide us
12 access to the property.

13 Q. Right. So all of those are additional costs on top of
14 the \$17,000 to \$22,000?

15 A. Yes, they would be.

16 Q. If a customer can't pay those up front, a poor
17 customer, they can't get electric; is that right?

18 A. We're required in order to receive those monies up
19 front under regulation and under our tariff.

20 Q. Your counsel brought up this point, and I need to
21 clarify this for the record. You attached some maps
22 and some longer memos relating to the tariff to your
23 rebuttal testimony; correct?

24 A. I did file that adjacent to my rebuttal testimony.

25 Q. And, in your rebuttal testimony, you indicated that you

1 thought that that had been provided to me previous to
2 that?

3 A. I provided it because Bob Rose, the firm who represents
4 Clark Energy, . . .

5 Q. Right.

6 A. . . . who is an associate of our counsel here today, he
7 called me to state a request that you made to him
8 asking him what would be the cost under our normal line
9 extension cost to extend service to Mr. Taylor should
10 he prevail in these proceedings. I supplied the first
11 memo, which you included as part of . . .

12 Q. Right.

13 A. . . . the complainant's testimony.

14 Q. Uh-huh.

15 A. What was not included as part of the complainant's
16 testimony, which I filed as part of the rebuttal, was
17 the follow-up memo, because Mr. Rose informed me that
18 you had a follow-up call to him that said, "I would
19 like some additional information about the proposed
20 routing," you know, just speculating on a route that we
21 might go . . .

22 Q. Uh-huh.

23 A. . . . to help clarify how the line extension cost was
24 computed, and I did so, and, in order to do that, I
25 provided the topographical maps illustrating the

1 location of Mr. Taylor's property basically from the
2 nearest neighbor over one half a mile away to Taylor in
3 order to accomplish your request, provide your request.
4 Q. And I'll tell that all that's correct as far as it
5 goes, but my question is this; what makes you think
6 that Mr. Rose ever got that to me? You provided it to
7 Mr. Rose, not to me; correct?
8 A. Yeah, I provided it to Mr. Rose at his request.
9 Q. Okay. All right. All right. So you don't have any
10 evidence that ever got to me?
11 A. No. I have no knowledge of what occurred between
12 counsel.
13 Q. Okay. Okay. In your all's contract, the application,
14 you give yourself or, at least, you require the person
15 signing the contract to give you the right to go on
16 their land and clear away trees and bushes; correct,
17 with herbicides or however you want to do it?
18 A. Well, what it's providing us permission to do is to
19 certainly access their property so that we're not a
20 trespassing party, and it provides us an opportunity
21 to, once we've established what a route for the new
22 power line to be, it's giving us what permission we
23 need to clear trees to build the power line and to
24 operate the power line that is specifically incidental
25 to the operation and maintenance of that line. It is

1 not a document that gives us carte blanche permission
2 to do whatever clearing that we need in order to use
3 our vehicles in order to access a piece of property.
4 Q. But you're allowed, under your agreement, to give a -
5 it gives you a perpetual easement; correct?
6 A. Well, it's providing us . . .
7 Q. Perpetual easement?
8 A. . . . permission to do what we need to do, install and
9 operate and maintain that line.
10 Q. It gives you a perpetual easement; doesn't it?
11 A. It gives us permission to be there.
12 Q. It gives you a perpetual easement to build or repair or
13 maintain power lines?
14 A. That's right.
15 Q. And that's for the landowner themselves and also for
16 any extension to any other member of the cooperative?
17 A. It does say that in the application.
18 Q. And it also gives you a perpetual easement to cut down,
19 treat with herbicides all trees and bushes located in
20 the proximity of the power lines?
21 A. And that's what I'm underscoring, incidental to the
22 operation and maintenance of the power line, not to
23 provide access to the property, just what's incidental
24 to the operation and maintenance of the line.
25 Q. And it's normal, certainly, isn't it, for trees and

1 bushes and vegetation to grow up in the power lines
2 sometimes?
3 A. If it is left unmaintained.
4 Q. And you all - Clark has to go out and trim them back,
5 trim back trees from power lines?
6 A. We maintain the lines regularly.
7 Q. That's a regular and normal thing; right?
8 A. Yes, it is.
9 Q. And, in this document, this same application that
10 Vaughn signed, he's called an applicant here at the
11 bottom, "Applicant's Signature." It's an application;
12 right?
13 A. Yeah, it's a membership application.
14 Q. And there's a \$10 fee that you have to pay with it. Do
15 you remember if you collected \$10 from Vaughn?
16 A. No. That has been waived a long time ago. I'm very
17 certain that Mr. Taylor probably did not pay the \$10
18 membership application. We don't collect that any
19 more.
20 Q. Okay. And then another form that your counsel has made
21 reference to is this Member Data form. Do you know
22 what I'm talking about?
23 A. Yes, it's a job order form.
24 Q. This one you call a job order form?
25 A. Yes, it is.

1 Q. And, in this form, Mr. Taylor is actually referred to
2 as a member; is that not correct?
3 A. Yeah.
4 Q. He's got a membership number?
5 A. Right, but that is somewhat of a ubiquitous form that
6 we use for all variety of customer requests. It could
7 be for new service. It could be, "My security light is
8 out." So that's a somewhat ubiquitous form for any
9 request that a customer may have of us. At the time
10 that that form was filled out, Mr. Taylor had, indeed,
11 called by telephone to inquire about service, the same
12 date which is on that job order. Mr. Sidwell took the
13 initial request and only informed Mr. Taylor that
14 certainly he was available to have electric service
15 extended to him provided, you know, once we do our
16 investigation to see what's going to be necessary to
17 provide him service, and he knew that it was certainly
18 within our territorial boundaries. So it was our
19 service area. That call was forwarded to Engineering
20 and that form was taken just based on a brief telephone
21 interview about what Mr. Taylor was requesting, and, at
22 that time, he was told that he would need to enter our
23 office in order to take out that membership or the
24 formal application for service, which he did on that
25 same day

1 HEARING OFFICER BRADY:

2 Mr. Messer, I'm going to suggest to you that you
3 listen to the question and answer it, and I think
4 it will go a little quicker if perhaps you do not
5 try to anticipate the direction he may go next
6 with his questioning.

7 A. Okay.

8 HEARING OFFICER BRADY:

9 Mr. Nash, you may continue.

10 MR. NASH:

11 Thank you, Judge.

12 Q. I misspoke. I didn't mean to imply a membership number
13 when I was looking here. There's a job order number on
14 this form.

15 A. Yes.

16 Q. So this job of, according to the form, providing
17 temporary service to Mr. Taylor's house has already got
18 a job order number by this point?

19 A. It was probably added later on that day or the next
20 day.

21 Q. Okay. Okay. Now, the next document I want to talk
22 about is this hand-drawn diagram that we've already
23 heard testimony about, . . .

24 A. Uh-huh.

25 Q. . . . and, indeed, as counsel has indicated, I have the

1 original here.

2 A. Uh-huh.

3 Q. A copy has been placed in the record.

4 A. Uh-huh.

5 Q. I don't know if you've seen this original or not. Let
6 me show you this.

7 A. Not the original. Thank you.

8 Q. It's a blue in color form. Do you recognize it?

9 A. Yes.

10 Q. What is it?

11 A. All that is, is very similar to the job order form that
12 you have. Any time a customer would have a specific
13 request, maybe about a security light being out or, you
14 know, whatever, you know, routine matter that we might
15 want to look at, it's just something that we use.

16 Q. My point is, this is a Clark form?

17 A. Yes, it is.

18 Q. This blue sheet is a Clark form?

19 A. Yes, it is.

20 Q. Okay. And do you recall Vaughn Taylor drawing this
21 diagram of the Point?

22 A. I was not present when that was done.

23 Q. Okay. So you don't recall that?

24 A. I was not present.

25 Q. The name that's on this diagram, William Perry, I know

1 you've noted that on there before, William Perry.

2 A. Uh-huh.

3 Q. Do you know William Perry?

4 A. Not personally. He is one of the Electrical Inspectors

5 licensed in Clark County.

6 Q. So he's an inspector that's known to you?

7 A. Yes.

8 Q. And to people at Clark?

9 A. Yes, and all utilities in Clark County.

10 Q. So you all work in conjunction with this man?

11 A. Well, not directly and in concert. He just has to

12 provide the electrical inspection of all new services

13 before we can hook them up.

14 Q. Okay. You've said in your testimony that the poles on

15 Mr. Taylor's land are 35 feet in length but that's not

16 the length that Clark uses any more. Am I stating that

17 accurately?

18 A. That's correct. Uh-huh.

19 Q. You use 40 foot poles now?

20 A. Forty foot poles are the standard for all new primary

21 construction; have been for many years.

22 Q. Okay. So, whenever you build some new lines, you use

23 40 foot poles; not 35 foot poles?

24 A. That's correct.

25 Q. Do you know when that change took place?

1 A. Oh, gee! At Clark, specifically, I couldn't say. I've
2 been there since '87. I know we were doing it in '87.

3 Q. Okay. Are you aware that 35 foot poles are still in
4 use anywhere in Clark's area?

5 A. Older poles prior to us making that change on new
6 poles, but any time a new pole is set or an older pole
7 replaced it's going to be a minimum of 40 feet.

8 Q. But there are still 35 foot poles in use?

9 A. Yeah, there's going to be some still in service out
10 there.

11 Q. And the wires - I call them wires. I think you all
12 call them conductors.

13 A. Uh-huh.

14 Q. Is that the correct term; conductors?

15 A. Wires or conductors, fine.

16 Q. Okay. The wires that were on the 35 foot poles on the
17 Taylor line or the retired line, I think your testimony
18 has been that those wires can actually handle the
19 amount of electricity that is used nowadays, but their
20 insulation is not adequate; is that correct?

21 A. That would be correct; yeah.

22 Q. Okay. So you don't use those wires in new construction
23 any more?

24 A. We don't use those insulators which support the wire in
25 that construction any more nor do we use the poles that

1 were there. We don't use those any more nor do we use
2 the transformer that was there any more.

3 Q. Right. But the wires themselves are okay? It's just
4 the insulators that were . . .

5 A. I didn't see the wires themselves. I know that the
6 wire was very old. I did not see it personally, but,
7 based on the reports from the contractor and from Mr.
8 Peyton, I know that the wires were old, but I did not
9 see them personally.

10 Q. Okay.

11 A. The issue would not have been the conductor firsthand
12 anyway. It would have been the rest of the line.

13 Q. The issue would not have been the conductor?

14 A. No. I said our first concern would be the poles, the
15 insulators, the transformer, and certainly the
16 conductor; what was the status of the conductor; was it
17 in the trees, on the ground; was it broken.

18 Q. And, of course, the transformer we've already heard has
19 bullet holes in it. You can't use a transformer with
20 bullet holes; can you?

21 A. No.

22 Q. All that whole line was Clark RECC's property; correct?

23 A. The materials of the line?

24 Q. Right.

25 A. Yes.

1 Q. And Clark RECC had metal tags on those poles; right?
2 A. I don't know. I didn't see them.
3 Q. Okay. Is that Mr. Peyton's department?
4 A. Yeah, well, he works in my group. It would not have
5 been unusual for there to have been a Clark RECC
6 identification tag.
7 Q. Yeah. Right.
8 A. It just says, you know, "Clark RECC." That way anyone
9 would know that it was a Clark Energy pole.
10 Q. Did you instruct Mr. Peyton to dispose of those tags or
11 is that something he did on his own?
12 A. Now, that would just be normal routine. Anytime we
13 inspect a job, any kind of construction, any kind of
14 retirement, we make sure that all of our hardware was
15 taken out.
16 Q. All right. Let's talk about the timing of these poles
17 getting removed or cut down. I think we've heard that
18 Mr. Peyton - or you had Mr. Peyton go out there back in
19 '97; right?
20 A. Mr. Peyton first met Mr. Taylor in June, '97. That was
21 the first appointment that was scheduled subsequent to
22 Mr. Taylor's application for service.
23 Q. And Mr. Peyton went out there in '97?
24 A. Yes. Not to the site. He couldn't reach the site.
25 They met at Judy Ray's store, and then Mr. Taylor took

1 him to Mitchell Sidwell's residence.

2 Q. All right. Well, let me clarify that. He went out to
3 part of the line? He saw part of the line?

4 A. No, I don't believe they did. They never even - did
5 not get to that point. They just went to Mr. Sidwell's
6 residence.

7 Q. Okay. In '99, September of '99, you received a call
8 from Mr. Taylor; correct?

9 A. Uh-huh.

10 Q. And he told you that he had his permits ready to go or
11 nearly ready to go, and he wanted the electric hooked
12 up; correct?

13 A. We discussed the permits that would be required of him
14 before he can receive electric service; yes.

15 Q. On September 27, '99, did you get a call from Mr.
16 Taylor where he told you that he was building on an
17 existing foundation; the poles are still there; he
18 should have his building permit in a couple of weeks?

19 A. What I would recall, that conversation was no
20 discussion of a foundation but a series of running
21 discussions that we had beginning in September of '97
22 about what his requisites for electric service were to
23 be and what we needed to have in terms of access in
24 order to satisfy his request.

25

1 MR. NASH:

2 Madam Clerk, could he be handed the Member Data
3 sheet, or should I just give him mine?

4 REPORTER:

5 Here, I've got it.

6 MR. NASH:

7 Okay.

8 A. Yeah, that's fine.

9 Q. Do you see, in the "Service Requested" block there in
10 the middle of the page, there is a note, a handwritten
11 note, there at the very bottom of that block . . .

12 A. Uh-huh.

13 Q. . . . talking about a 9-27-99 phone call. Was that not
14 a phone call that Vaughn had with you?

15 A. I may have talked with him at one point. That was just
16 a follow-up call that he had with the person that was
17 maintaining this particular job order. I do recall
18 talking with him, again, a running set of phone calls,
19 about what was going to be required in order to provide
20 service there. So . . .

21 Q. Well, I tell you what I'm specifically interested here
22 in is that Vaughn apparently told someone at RECC that
23 he should have his building permit in a couple of
24 weeks. Did he tell you that or not?

25 A. We discussed that he was in the process of trying to

1 procure permits, and he was interested in procuring
2 permits but, to date, no permits have been provided.
3 So, no, we have no permits.

4 Q. Did he tell you that he should have his building
5 permits in a couple of weeks?

6 A. I don't recall specifically that. All that I know is
7 that we never received any, but we discussed the
8 necessity of he needing to have permits.

9 Q. By the fact that this is noted on this form, does that
10 indicate at Clark that someone at Clark was told that?

11 A. No. Well, all this asserts is just what the customer
12 asserted.

13 Q. Right. Someone at Clark was told that.

14 A. Yeah. I would . . .

15 Q. Thank you. How many days after that, 9-27-99, did you
16 cut the poles down?

17 A. The line was retired in October, '99. So it would
18 be . . .

19 Q. How many days? What day?

20 A. I would have to go back and look at a specific day. I
21 do not recall the specific day, but I do remember it
22 was October, '99.

23 Q. Do you have those records with you?

24 A. Not of the specific date. I don't know if I do or not,
25 not on a specific date.

1 Q. The fellow from Davis Elliot that's here is the one
2 that did that; right?

3 A. That was his crew; yes, it was.

4 Q. All right. So, if it was in October, we can say it's
5 less than a month after you got this phone call you cut
6 the poles down; is that fair?

7 A. It was in October. It was, you know, within a month.
8 Yes, I would say that.

9 Q. Okay. I'm sorry to jump around. Let me just jump
10 around one more time, back to the application form.
11 The idea that there's a blank there to check whether
12 you are or are not the owner of the property . . .

13 A. Uh-huh.

14 Q. Do you know the blank I'm talking about?

15 A. Yes, I do.

16 Q. Let me ask you this. If a customer comes to Clark and
17 wants to hook up electric to a piece of property or a
18 house on a piece of property, must they have some
19 connection to that property, in other words, either a
20 Deed, a lease, permission from the owner, or can they
21 just walk in and say, "Hey, I want to hook up electric
22 over here; please do it"?

23 A. Ownership is not a requirement for service on a piece
24 of property. All that we would want to obtain is
25 permission from the owner of that property, the

1 permission to do so.

2 Q. Okay. So you've got to have, at least, permission from
3 the owner . . .

4 A. Uh-huh.

5 Q. . . . to hook up electric. A lease, would that be good
6 enough to hook up electric?

7 A. No, we wouldn't even require the lease. We would just
8 want just the current permission of the owner to do so.

9 Q. Okay. Well, but, if a customer walks in with a lease,
10 is that good enough to hook up electric, a lease in
11 their name?

12 A. No. We still want to talk with the owner.

13 Q. You've still got to get the owner's permission?

14 A. Right.

15 Q. All right. Now, if a person is not the owner of the
16 property - well, let me back up. If a person comes in
17 with a Deed, is that good enough?

18 A. We don't require a Deed.

19 Q. No. I know, but, if they come in not with the owner's
20 permissionslip but a Deed, they come in and say, "I am
21 the owner," is that good enough to hook up electric?

22 A. Well, I . . .

23 Q. Won't you agree with me on that question?

24 A. I guess I'm having trouble following what your question
25 is.

1 Q. It's a very easy question. If I come in with a Deed,
2 will you hook up electric to my property?
3 A. Yeah, if . . .
4 Q. Okay. Thank you. Now, if I don't have a Deed, you
5 need some sort of paper; correct?
6 A. No.
7 Q. You need a permission from an owner. You just said
8 that.
9 A. We need the permission of the owner in order to set any
10 poles, . . .
11 Q. You need . . .
12 A. . . . but we don't require any Deed or documentation to
13 prove that John Doe is the owner of the property.
14 Q. But, if I am not the owner of the property that I want
15 to hook electric to, you must have something from me to
16 indicate that I have permission to do that; correct?
17 A. All that we would ask of you, if you're not the owner
18 of the property and you want electric service, we would
19 merely ask who is the owner of the property and that
20 customer and us together will approach the owner and
21 inform them of the request and ask of their consent;
22 "Can we do what is provided here under our tariffs to
23 extend electric service?"
24 Q. Certainly. Exactly. So there is a requirement of some
25 sort of permission, whether it be owner's permission in

1 writing or verbal or a Deed, there is some sort of
2 requirement to get electric service to every piece of
3 property?

4 A. There is only a requirement to procure permission in
5 order to give us permission to access the property.
6 There is no implicit or direct requirement to present a
7 Deed.

8 Q. Unless you don't have the owner's permission?

9 A. In no case is anyone required to present a Deed.

10 MR. NASH:

11 That's all I have, Judge.

12 HEARING OFFICER BRADY:

13 Mr. Pinney?

14 CROSS EXAMINATION

15 BY MR. PINNEY:

16 Q. Mr. Messer, does Clark Energy have any records of the
17 previous electric service that was provided at this
18 location?

19 A. No.

20 Q. And I know we've gone over this a little bit, but to
21 what degree does the condition of the line matter when
22 determining whether to apply the 1,000 foot extension
23 rule, I mean, namely the line from which the extension
24 will be going?

25 A. Well, I think the basis of that is because, at our

1 first meeting in the field, it was accepted common
2 knowledge that there was "an old abandoned power line"
3 there and that there was no portion of it that was
4 going to be possible for us to rehabilitate, reuse, or
5 use in any way, form, or fashion in order to satisfy
6 this current customer request. That was common
7 knowledge at the first meeting between Mr. Peyton, Mr.
8 Taylor, and I think even Mr. Sidwell even asserted that
9 it was, you know, common knowledge. So we were
10 operating on the premise that, regardless of what may
11 have been there in the 1960s, we were starting from a
12 fresh slate and that we needed to see, first, how we
13 were going to gain access to the property, and then,
14 once that was secured, there was a means into the
15 property, then we would come and revisit Mr. Taylor at
16 a later date and then see how best to extend service
17 along that road to him.

18 Q. Is there criteria for retiring a line specified in any
19 of Clark Energy's policies, documents, or is it like a
20 subjective decision made by an individual employee or
21 management?

22 A. No. That would be, you know, people in Engineering and
23 Operations would make a determination that, once any
24 facility is no longer required for service at any
25 location and certainly if we know that it's there,

1 rather than seek to maintain it and operate it, we're
2 probably going to retire it.

3 Q. Okay. But there's no standard policy for it?

4 A. Oh, no, no, there's not a standing, you know, written
5 policy; no.

6 MR. PINNEY:

7 All right. Thank you, Mr. Messer. No further
8 questions, Your Honor.

9 HEARING OFFICER BRADY:

10 Thank you. Mr. Thomas?

11 MR. THOMAS:

12 Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. THOMAS:

15 Q. Mr. Messer, does Clark Energy have any records of any
16 service dating back into the sixties showing service to
17 any location that it serviced? Does it have service
18 records?

19 A. You may find work orders, you know, going way back
20 when, but there's no records of this.

21 Q. In fact, were there any drawings? On any of Clark
22 Energy's drawings of their distribution lines, did any
23 of these poles leading down to the Point - were they
24 identified on any drawings that Clark has in its
25 possession?

1 A. No, they do not.

2 Q. What service has been done on these poles since you
3 arrived in 1987?

4 A. You mean these poles that were later retired?

5 Q. Uh-huh.

6 A. None.

7 Q. To your knowledge, has there ever been any service
8 performed on these particular lines?

9 A. No.

10 Q. If there's a requirement that you inspect your
11 facilities every two years, how is it that this
12 particular line was not discovered during that
13 inspection?

14 A. What has evidently occurred is that, after the original
15 cabin burned, over 30 years ago, that there was no
16 service there. No one had any electric service there.
17 The right-of-way had basically reclaimed the original
18 power line route, and the line had subsequently fallen
19 into such disrepair, some of the poles broken, some of
20 the lines being down, and, at the point when you are at
21 Mr. Hanley's property and you look at the last pole in
22 his field, okay, there is no line that you can see from
23 where that pole was on his property that crossed the
24 fence, and directly across the fence is where the woods
25 begin, and shortly beyond that is when you start down

1 over the cliffs or the slope or the bluff, and there
2 was no evidence of any line that was there. So, during
3 the two year system inspection, it didn't exist on the
4 maps, and, when our folks, during the course of the two
5 year system inspection, when they were out in the field
6 and they can see that the last pole is there and see
7 that there is no line continuing past that pole across
8 the fence into the line of trees leading down over the
9 cliffs, then there was no evidence to any of our people
10 that there was any line for us to either inspect or
11 maintain or, in this case, retire.

12 Q. What considerations are made in determining whether or
13 not to retire a line?

14 A. Well, one is, is it serviceable; is there a need for
15 electric service. In this case, the line was not
16 serviceable. As I indicated, much of the equipment that
17 comprised the old power line are materials that have
18 not been in use at Clark for many, many, many years.
19 It was quite obvious that the right-of-way had
20 completely reclaimed the original power line route that
21 was cleared back in the sixties when it was apparently
22 built. Obviously, the trees had overtaken the right-
23 of-way. Parts of the line were on the ground, and some
24 of the poles were broken. I did not think, based on
25 Mr. Peyton's report that, given the apparent age of the

1 line and the condition of the poles that were still
2 left standing and, according to the contractor, many of
3 the trees were holding those up, we do not believe that
4 there's any part of the line that is going to be any
5 longer capable of supporting the mechanical loads of,
6 you know, supporting, you know - running new conductor
7 and hanging a new service there, plus we did not have
8 the access.

9 Q. Well, what was the capacity of the transformer that was
10 there?

11 A. The capacity of the transformer was a 1.5 kVA or a
12 1,500 volt amp or 1,500 watt, basically, transformer.

13 Q. And what is the capacity of the transformers that are
14 currently used by Clark for providing service?

15 A. They're typically going to be 15 kVA to 25 kVA for
16 typical residential use.

17 Q. What would the existing transformer, had it been in
18 operational condition, been able to sustain as far as
19 electric use?

20 A. At full nameplate rating, full load, that would be
21 equivalent to about a 1,500 watt hair dryer that you
22 would hold.

23 Q. What was the capacity of the insulators that were
24 attached to the electric poles?

25 A. The insulation level on the old line were for the 7.2

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kV to ground insulation level.

Q. And what is currently being used by Clark?

A. It's 14.4 kV or 14,400 volts to ground.

MR. THOMAS:

I don't have anything further, Your Honor.

HEARING OFFICER BRADY:

Mr. Nash?

RE CROSS EXAMINATION

BY MR. NASH:

Q. In response to Mr. Pinney's question, you testified that, in '97, when Mr. Peyton went out there, it was accepted by all and common knowledge of all that this power line was old and abandoned?

A. Based on what he learned at that meeting, that is correct.

Q. In '97?

A. That's correct.

Q. Why then did you wait until just days after Vaughn's phone call, in '99, when he said, "I've got my building permits, and I'm ready to go," why did you wait until then to retire the line?

A. Two parts to that. First of all, we still were operating under an assumption that Mr. Taylor was going to provide some kind of road access into the property and that we very, very soon were going to be engaged in

1 new power line construction. At that time, we would
2 have certainly taken out what was left of the old power
3 line once we had a chance to inspect and see how bad it
4 actually was and just get rid of it. What prompted the
5 visit in October was Mr. Taylor's father calling me.
6 Do you want me to go on and describe that?
7 Q. If you need to, to answer my question.
8 A. Okay. And Mr. Taylor's father called me to inquire,
9 having apparently heard it from Vaughn, you know, "Tell
10 me about the difficulties involved in extending service
11 to Mr. Taylor," and I described everything that has
12 been provided in the record about our need for the
13 reasonable access, about the permits, which is what he
14 needed to provide, and I asked Mr. Taylor, the father,
15 if he was aware of all this, and he seemed rather
16 surprised to learn about all these issues, and I, just
17 during the conversation, just asked him directly, if
18 he's going to be building a house or a cabin as a
19 residence, how in the world is he planning on, you
20 know, getting in and out of this place on a day-to-day
21 basis, how is he planning on building a house, and he
22 said, well, the plans were that he was either going to
23 airlift materials or airlift a mobile home in. Well,
24 that certainly was of interest to me to learn that,
25 and, since there had been a running series of phone

1 calls about the access issue, I took it upon myself to
2 actually go see it for myself.

3 Q. Okay. But my question is not what triggered your
4 visit. My question is, is why was there a two year
5 delay in your decision to retire the line when you knew
6 in '97, according to you, you knew, that it was old and
7 abandoned at that point and that you didn't have any
8 access and you had to send people in there with chain-
9 saws?

10 A. We knew in '97 that we had an old abandoned power line
11 there. We had not, at that point, engaged in any kind
12 of inspection of it, because we always believed that it
13 was going to be a short-term issue soon to be taken
14 care of, that Mr. Taylor was going to go ahead and
15 provide road access into the property, and then we
16 would go from there. So we were always operating on
17 the assumption that Mr. Taylor was going to have road
18 access into the property, and he was very interested in
19 building his residence that he proposed, and we had
20 just been waiting for him to return the call to say,
21 "I've got a road in here per the meeting at Sidwell's
22 house." So we had been awaiting that time just to come
23 back and do what we needed to do to see best to extend
24 him service.

25

1 MR. NASH

2 That's all, Judge.

3 HEARING OFFICER BRADY:

4 Mr. Pinney?

5 RE CROSS EXAMINATION

6 BY MR. PINNEY:

7 Q. Mr. Messer, we had an informal conference on Monday, at
8 which point I inquired what service area or what area
9 Clark Energy served, and, when looking on the service
10 area map, I noticed that Clark Energy, and I may have
11 been mistaken, but they serve part of Fayette County?

12 A. Yes, that's correct.

13 Q. And the Kentucky River forms the border between Fayette
14 and Clark County?

15 A. No.

16 Q. It does not?

17 A. No.

18 Q. Okay.

19 A. No. The Kentucky River forms the border between Clark
20 and Madison County.

21 Q. All right.

22 A. Clark and Fayette have a pretty much contiguous border.
23 I think there's one creek in the area north of there
24 that's part of the border, but, no, the Kentucky River
25 is not a border between Clark and Fayette.

1 Q. Okay. That was . . .

2 A. Yeah.

3 Q. . . . my mistake, but it leads me to the question,
4 though, does Clark Energy provide any power on the
5 other side of the Kentucky River from Clark County into
6 Fayette County? I mean, do Clark County's lines cross
7 the Kentucky River?

8 A. We have no lines that cross - no. You mean at this
9 location?

10 Q. At any location.

11 A. Yeah, we do have lines that cross the Kentucky River.

12 Q. Now, how are those lines serviced?

13 A. Well, the poles are on either end.

14 Q. Well, I know, but, I mean, . . .

15 A. Yeah.

16 Q. . . . the Kentucky River is not a small river, and, I
17 mean, I'm sure there might be narrow points, but how is
18 the line between those two poles serviced in the event
19 of some sort of disruption?

20 A. Well, first of all, we have redundant service from
21 Madison County and those poles are not, you know, the
22 only means to provide service to the area, plus there's
23 no one, to my recollection, right there at the Kentucky
24 River that we don't have, you know, access to.

25 Q. Okay.

1 A. Okay.

2 Q. And then I have one more question. Is Clark County
3 engaging in any sort of automatic meter reading trial?
4 There are some other co-ops and electricity companies
5 that are engaging in that.

6 A. Yes, we are. We're very interested in them; yes.

7 Q. Okay. Are you starting to participate in it or are you
8 just showing some interest?

9 A. Yes, we're starting to participate in it; that's right.

10 MR. PINNEY:

11 Okay. No further questions, Your Honor.

12 HEARING OFFICER BRADY:

13 Mr. Thomas?

14 MR. THOMAS:

15 No further, Your Honor.

16 HEARING OFFICER BRADY:

17 Mr. Nash?

18 MR. NASH:

19 I do.

20 RE CROSS EXAMINATION

21 BY MR. NASH:

22 Q. So you can read meters automatically now?

23 A. Not now, but we're installing a system where we can.

24 Q. So you don't have to go to the meter?

25 A. Yes, we still do.

1 Q. What's the point of the automatic meter reading, then?
2 A. The automatic meter reading is not to supplant or
3 replace Commission regulations. We're still required,
4 on a very periodic basis, to visit those facilities in
5 order to inspect them and make sure that they're safe.
6 Q. A follow-up to Mr. Pinney's question, the span of the
7 line that goes across - does the line go across the
8 river or is it under water?
9 A. No. There's probably a span across the river; yes.
10 Q. How do you service it if it breaks in the middle or if
11 you have a problem in the middle?
12 A. Well, how would we . . .
13 Q. How do you service the line if you have a problem right
14 in the middle of the river?
15 A. What one would have to do, first of all, there's a
16 redundant service there. The service at the river is
17 not required for service. We have access to the poles
18 on either side of the river.
19 Q. I know but I'm not talking about that. I'm talking
20 about in the middle of the river.
21 A. Okay.
22 Q. How do you service that?
23 A. If that was to go down, how would we replace that?
24 Q. When you get a break in it or, you know, a fray in the
25 middle of the river.

1 A. The span would have to be replaced.
2 Q. From either side?
3 A. From either side.
4 Q. So you don't actually have to have a vehicle access
5 below every power line in your system?
6 A. Only if we were to replace an existing - put something
7 like a repair splice or something like that.
8 Q. But you don't have that kind of access to this power
9 line that crosses the river?
10 A. No, not that one; no.
11 Q. You have to pull it from one side or the other?
12 A. We would replace it.
13 Q. Right. Okay.
14 MR. NASH:
15 That's all, Judge.
16 A. But that's assuming, of course, we had access for our
17 equipment on either side of the river.
18 Q. I understand. Access at the pole?
19 A. Uh-huh.
20 MR. NASH:
21 Right. Okay. That's all, Judge.
22 HEARING OFFICER BRADY:
23 Mr. Pinney?
24 MR. PINNEY:
25 No further questions, Your Honor.

1 HEARING OFFICER BRADY:

2 Mr. Thomas?

3 MR. THOMAS:

4 That does raise one question, Judge.

5 REDIRECT EXAMINATION

6 BY MR. THOMAS:

7 Q. Mr. Messer, in order if a line were to split in the
8 middle, you would not send someone out into the middle
9 of the river to splice that line; would you?

10 A. No, we would not.

11 Q. How would you go about the process of removing that
12 span and replacing it with a new span?

13 A. What one would have to do is, first, you would have to
14 get bucket trucks and digger trucks to each of the
15 poles on either side of the river and replace - pull
16 out the old span and, as you're pulling out the old
17 span, pull in a new span in behind it.

18 Q. And, when you replace the old span, that would be done
19 through the use of trucks and hydraulics to roll up the
20 now damaged span?

21 A. It would be done exclusively through the use of trucks
22 and hydraulics and other equipment, powered equipment.

23 MR. THOMAS:

24 I don't have anything further, Your Honor.
25

1 MR. NASH:

2 Nothing further.

3 MR. PINNEY:

4 Nothing further.

5 EXAMINATION

6 BY HEARING OFFICER BRADY:

7 Q. Well, I'm still in the dark. Okay. So you've got
8 cherry pickers or whatever their equivalent at the top
9 of each pole on each side of the river, and each side
10 has taken off its ending of the old line. How are you
11 going to get the new one from one pole to the other?

12 A. Okay. What we would do, Your Honor, is, first of all,
13 each pole on either side, we would probably dead end
14 it. In other words, instead of the line forming a
15 contiguous, you know, path through the insulator, what
16 we would do is cut in what we would call a double dead
17 end. In other words, you've got a suspension string of
18 insulators on one side of the pole that's connected
19 electrically to a suspension set of insulators on the
20 other side of the pole. If we need to replace the
21 river span, what we would do is set up equipment to
22 each of the poles on either side of the river and, of
23 course, the service would be disconnected there. We
24 would be serving it from alternate directions for the
25 immediate locales on either side of the river. Once we

1 would set up that equipment, one of the ways that we
2 would do that is - the line is deenergized - we would
3 basically tie ropes to one side of the pole and have a
4 winch powered trailer that we could then disconnect the
5 line on the other side and start taking up that wire,
6 and then it's going to pull the rope across at the end
7 of the section of line that we are retiring, and then
8 we're going to use that same rope to pull the new span
9 across, and then lift it up with the power equipment on
10 either side of the river at the poles where we can get
11 vehicles to them, and then reattach them back to the
12 poles.

13 HEARING OFFICER BRADY:

14 Thank you. I had often wondered how you did that.

15 Now, any other questions as a result of mine?

16 RE CROSS EXAMINATION

17 BY MR. NASH:

18 Q. The same system would work, I guess, if there was a
19 pole at the bottom of the cliff and a pole at the top
20 of the cliff and you had truck access on both ends.
21 You could do the same thing. You wouldn't have to
22 actually get up on the cliff. You can pull it that
23 way.

24 A. If you had truck access at both ends.

25 Q. Okay. All right.

1 A. That is digger derricks, buckets, winch powered
2 trailers, service trucks.

3 MR. NASH:

4 I understand. That's all, Judge.

5 MR. PINNEY:

6 No further questions, Your Honor.

7 MR. THOMAS:

8 Nothing further, Your Honor.

9 HEARING OFFICER BRADY:

10 I think this means you get to step down, Mr.
11 Messer.

12 A. Thank you.

13 HEARING OFFICER BRADY:

14 You have another witness?

15 MR. THOMAS:

16 Yes, Your Honor, I have two.

17 HEARING OFFICER BRADY:

18 Okay.

19 MR. THOMAS:

20 The next witness is Todd Peyton.

21 HEARING OFFICER BRADY:

22 All right.

23 WITNESS SWORN

24

25

1 be introduced.

2 HEARING OFFICER BRADY:

3 All right. Mr. Nash?

4 MR. NASH:

5 Okay.

6 CROSS EXAMINATION

7 BY MR. NASH:

8 Q. Mr. Peyton, a pole count. It looks like, according to
9 your testimony, you were out there with Mr. Messer in
10 October of '99. Do you remember the day?

11 A. The date?

12 Q. The date.

13 A. I'm not sure of the exact date.

14 Q. Do you have any notes or anything that show that,
15 records?

16 A. For the exact date, no.

17 Q. All right. Well, anyway, you remember going out there
18 with Mr. Messer; correct?

19 A. Yes, sir.

20 Q. You went to Mr. Hanley's house?

21 A. Yes.

22 Q. And you saw that there was a pole which was the last
23 pole that provided electricity to Mr. Hanley?

24 A. Yes, sir.

25 Q. And then, beyond that, there was another pole at the

1 edge of Mr. Hanley's field; is that correct?

2 A. Yes, sir.

3 Q. Okay. But there was no line running between those two

4 poles, or was there?

5 A. There was no line that went beyond the pole at the edge

6 of the field.

7 Q. So there was line from Mr. Hanley's house to the pole

8 at the edge of the field but no line beyond that that

9 you saw?

10 A. That's correct.

11 Q. Okay. Now, the pole at the edge of the field, was it

12 of the same vintage as the pole at Mr. Hanley's house,

13 the same kind of pole?

14 A. In appearance.

15 Q. Okay. And, for both of those poles, you could drive a

16 vehicle to both of those poles; correct?

17 A. Yes, sir.

18 Q. All right. And then, from there, I think, according to

19 your testimony, is where there was no line, and it sort

20 of went down into the forest?

21 A. That's correct.

22 Q. And you found three poles up there, two broken and a

23 third that was leaning?

24 A. That's correct.

25 Q. Okay. So that's two broken, one leaning, that's three,

1 one at the edge of the field that you can drive to,
2 that's four, one at Mr. Hanley's house, that's five.
3 Is that accurate?

4 A. From what you said, that would be five poles.

5 Q. Well, I'm asking you from what your memory is. Is that
6 the way you remember it?

7 A. That would have been five poles; yes.

8 Q. Okay. Were those the only five poles up on the higher
9 level before you got down to the level of the Point, or
10 were there more poles than that on the higher level?

11 A. There were, from memory, approximately maybe two other
12 structures on the high level, as you call it.

13 Q. Okay. And then, down on the level of the Point - are
14 you with me when I'm saying "the same level as the
15 Point"?

16 A. Yes, sir.

17 Q. Do you remember how many poles were down here by your
18 observation?

19 A. From memory, I'll say there were two additional poles
20 on the lower level, as you call it.

21 Q. Okay. And those poles were standing up straight?

22 A. I believe the poles on the lower level were standing.

23 Q. Okay. Did you remove those metal tags from the poles?

24 A. The metal tags that were removed were simply the
25 identification tags that say "Clark RECC."

1 Q. You removed them?
2 A. Yes, sir,
3 Q. And disposed of them?
4 A. Yes, sir.
5 Q. And there's no record of them any more?
6 A. No.
7 Q. And you did that in '99?
8 A. That was done in . . .
9 Q. 2000?
10 A. As part of the inspection of that line after the
11 contractors had accomplished their work.
12 Q. That was done after they cut down the poles?
13 A. Yes, sir.
14 Q. Were you aware, at that time, that there was some
15 dispute or that Vaughn was expressing displeasure about
16 this whole situation?
17 A. At that point, it was simply a retirement of an
18 abandoned line.
19 Q. You weren't aware of any dispute at that point in time?
20 A. No.
21 MR. NASH:
22 Okay. That's all I have, Judge.
23 HEARING OFFICER BRADY:
24 Thank you. Mr. Pinney?
25

1 CROSS EXAMINATION

2 BY MR. PINNEY:

3 Q. Mr. Peyton, did you recommend the retirement of that
4 line or did somebody else tell you to retire that line?

5 A. It was a recommendation of Mr. Messer that that line be
6 completely retired.

7 MR. PINNEY:

8 Okay. No further questions, Your Honor.

9 HEARING OFFICER BRADY:

10 Mr. Thomas?

11 REDIRECT EXAMINATION

12 BY MR. THOMAS:

13 Q. What were your observations, Mr. Peyton, with respect
14 to the condition of that line?

15 A. That line was in very poor condition as well as the
16 poles that were broken, as I had stated. A conductor
17 was missing. It was grown into the trees, suspended by
18 the trees. There was no obvious right-of-way at all.
19 You could not tell that there was even a line there
20 just from observation.

21 MR. THOMAS:

22 I don't have anything further, Your Honor.

23 HEARING OFFICER BRADY:

24 Mr. Nash?

25

1 RE CROSS EXAMINATION

2 BY MR. NASH:

3 Q. When you made this inspection, you followed the path of
4 the poles and the lines; correct?

5 A. I followed the path of least resistance to be able to
6 basically walk through the area, because there was no
7 way to actually tell where the line was. It was least
8 resistance.

9 Q. Did you ever walk down this road leading from Dr.
10 Hanley's property down to the bottom of the level of
11 the Point?

12 A. I'm not aware of any road whatsoever.

13 MR. NASH:

14 Okay. All right. That's all.

15 HEARING OFFICER BRADY:

16 Mr. Pinney?

17 MR. PINNEY:

18 No further questions, Your Honor.

19 HEARING OFFICER BRADY:

20 Mr. Thomas?

21 MR. THOMAS:

22 Nothing further, Your Honor.

23 HEARING OFFICER BRADY:

24 I believe that means you can step down, sir.

25 A. Okay. Thank you.

1 MR. THOMAS:

2 I have one other witness, Your Honor.

3 HEARING OFFICER BRADY:

4 All right, sir.

5 MR. THOMAS:

6 I'll go get Mr. Maynard.

7 WITNESS SWORN

8 HEARING OFFICER BRADY:

9 Thank you. Have a seat, please, sir. Mr. Thomas?

10 MR. THOMAS:

11 Thank you, Your Honor.

12 The witness, JAMES MAYNARD, after having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q. Can you please state your name for the record, sir?

17 A. James Maynard.

18 Q. And, if you would, spell your last name.

19 A. M-a-y-n-a-r-d.

20 Q. Mr. Maynard, on June 12, do you remember signing a
21 Verified Direct Testimony document?

22 A. Yes.

23 Q. Did you have a chance to review the answers to the
24 questions that were contained in that document?

25 A. Yes.

1 Q. And are they true and accurate?
2 A. Yes.
3 Q. At this time, do you wish to adopt those as your
4 testimony in this matter today?
5 A. Yes.
6 Q. Are there any additions, corrections, or deletions that
7 you would like to make with respect to that testimony?
8 A. No, other than, you know, commenting on the unsafe
9 condition of, you know, working any of the line.
10 Q. Okay. And I think that's contained in your statement.
11 A. Is it? Okay.
12 MR. THOMAS:
13 Thank you, Your Honor.
14 HEARING OFFICER BRADY:
15 Mr. Nash?
16 CROSS EXAMINATION
17 BY MR. NASH:
18 Q. Mr. Maynard, my name is Patrick Nash. I represent
19 Vaughn Taylor, . . .
20 A. Yes, sir.
21 Q. . . . the complainant in this case. We've not met.
22 You work for Davis Elliot?
23 A. Yes.
24 Q. Tell me what Davis Elliot does.
25 A. It's an electrical contractor that does work for power

1 companies.

2 Q. Okay. Is Clark one of David Elliot's big customers?

3 A. Yes.

4 Q. Do you have any idea what percentage of Davis Elliot's
5 business Clark represents?

6 A. Oh, percentage-wise, it probably wouldn't be maybe one
7 percent.

8 Q. Only one percent of Davis Elliot's business?

9 A. Yeah, because they're working, you know, several
10 states.

11 Q. Oh, I see. Okay. And what's your position?

12 A. A foreman.

13 Q. How long have you been doing that job?

14 A. Well, foreman, I've been doing about eight years.

15 Q. And then how long before that have you worked in this
16 industry?

17 A. About 20-22 years, since '78, I believe it is.

18 Q. Okay. In those years, I take it, you're out in the
19 field quite a bit working on power lines and poles?

20 A. Yes.

21 Q. Is there always a road running underneath every power
22 line?

23 A. Oh, pretty much.

24 Q. I'm talking about underneath the spans now.

25 A. Oh, no, not underneath. Along beside of or . . .

1 Q. Nearby?

2 A. Nearby, yes.

3 Q. Okay. Have you ever seen any 35 foot poles in use?

4 A. Yes.

5 Q. The wire that was removed from - I guess it's better
6 called conductor that was removed from this property,
7 have you ever seen any conductor like that in use?

8 A. The type of wire, you're talking about?

9 Q. Yeah.

10 A. Yes.

11 Q. Did you walk this whole route? Did you observe this
12 whole power line route before it was cut down?

13 A. I just walked it as we were taking it down.

14 Q. Okay. So you've seen it all?

15 A. Yes.

16 Q. Okay. We've just heard testimony that the first pole
17 was actually still providing electricity to somebody's
18 house, and then there was a pole beyond it at the edge
19 of a field that didn't have any electricity to it. Is
20 that your memory?

21 A. Yes.

22 Q. Now, beyond that pole that was at the edge of the
23 field, do you remember how many poles there were on the
24 higher level?

25 A. It seemed like it started over hill from that point.

1 Then it just went, you know, straight down to the river
2 and then turned to the left, I believe it was.

3 Q. Okay. And then do you remember some poles down on the
4 lower level where the homesite was?

5 A. Yes.

6 Q. Do you remember how many poles were down on the lower
7 level?

8 A. There was one at the bottom of the hill where it made a
9 turn, and then there was the one at the end where the
10 old homesite used to be and then a small service pole
11 there.

12 Q. Uh-huh. Were those poles standing up pretty straight?
13 I'm talking about the ones on the lower level.

14 A. On the lower level? Well, the last two was, I know of.

15 MR. NASH:

16 Yeah. Okay. That's all I have, Judge.

17 HEARING OFFICER BRADY:

18 Thank you, sir. Mr. Pinney?

19 CROSS EXAMINATION

20 BY MR. PINNEY:

21 Q. Mr. Maynard, as foreman, have you done any work besides
22 removing those lines for Clark Energy, done any other
23 projects?

24 A. Yes.

25 Q. Could you describe the general nature? It's just

1 A. You know, a winch or dragging them by hand.
2 Q. And how do you get the hole to exist?
3 A. You set post hole diggers and manually dig it.
4 Q. And you do that by hand?
5 A. Yes.
6 Q. And then how do you go about the process of piking the
7 pole and setting it up?
8 A. Like I said, starting at one end and picking the pole
9 up and then, you know, walking down the pole and
10 lifting as you go with it.
11 Q. How many individuals does it take to pike a pole?
12 A. Oh, the average size pole, it will take about at least
13 six.
14 Q. And what has to be the condition of the terrain in
15 order to do that?
16 A. It has to be all open and, you know, good footing.
17 Q. Mr. Nash had asked you had you ever seen conductor of
18 the type that was on this particular line in use.
19 A. Yes.
20 Q. I think your response was yes. What about the actual
21 condition of this conductor? Well, the condition of
22 this, the type of wire is like three stranded wires
23 wrapped together. You know, there's two copper strands
24 around like a copper coated steel cord, and there's a
25 lot of places that the steel cord had rusted in two on

1 did you stay pretty much next to or near the path where
2 the power lines were running, the existing power lines
3 were running?

4 A. Well, pretty much, other than, you know, having to walk
5 around, you know, little cliffs or small areas to get
6 down around the area.

7 Q. Sure. Did you observe a road on Dr. Hanley's property
8 that actually winded down the cliff face, not near the
9 existing poles and lines but down the cliff face?

10 A. Well, I don't know exactly where his property is at,
11 but the guy we talked to, you know, gave us directions
12 on how to get there. There was like a dirt road that
13 started over the hill from that point, but it didn't go
14 very far there.

15 Q. Okay. So you didn't find the road that went all the
16 way down to the bottom?

17 A. No.

18 MR. NASH:

19 Okay. That's all, Judge.

20 HEARING OFFICER BRADY:

21 Mr. Pinney?

22 MR. PINNEY:

23 No further questions, Your Honor.

24 HEARING OFFICER BRADY:

25 Mr. Thomas?

1 MR. THOMAS:

2 That raises one question.

3 REDIRECT EXAMINATION

4 BY MR. THOMAS:

5 Q. You followed the area in line with the electric line?

6 A. Yes.

7 Q. What was the condition of the property that traversed
8 that line?

9 A. It was just dense growth of trees in the right-of-way.
10 You know, there was a lot of like small cliffs and, you
11 know, just heavy brush.

12 Q. Was it a flat terrain?

13 A. No.

14 Q. How did it develop? Please describe what the terrain
15 was like, to the Court.

16 A. It was just constantly, you know, all was downhill.
17 You know, just constantly on an incline.

18 Q. Were there any ability to be able to get any type of
19 equipment in there to repair that line?

20 A. No, nothing other than a dozer or something.

21 MR. THOMAS:

22 I don't have anything further, Your Honor.

23 HEARING OFFICER BRADY:

24 Mr. Nash?

25

1 A. All right.

2 HEARING OFFICER BRADY:

3 Thank you. Mr. Thomas?

4 MR. THOMAS:

5 That would conclude the testimony and the case for
6 the defendant, Clark Energy Cooperative, Your
7 Honor.

8 HEARING OFFICER BRADY:

9 All right. Mr. Pinney, anything in particular
10 that you need to do or the Commission needs to do?

11 MR. PINNEY:

12 Not of which I'm aware, Your Honor.

13 HEARING OFFICER BRADY:

14 All right. Ms. Sewell, when will the transcript
15 be available?

16 REPORTER:

17 Around the 27th, I think.

18 HEARING OFFICER BRADY:

19 I'm sorry. It will be when?

20 REPORTER:

21 27th.

22 HEARING OFFICER BRADY:

23 Of August?

24 REPORTER:

25 July. July.

1 HEARING OFFICER BRADY:
2 27th. Okay. July 27. Okay. Mr. Pinney, I can't
3 remember the procedural Order. What did it
4 provide on . . .

5 MR. PINNEY:
6 I believe it was 15 days after the filing of the
7 transcript briefs would be due.

8 HEARING OFFICER BRADY:
9 Does that sound right to you all?

10 MR. THOMAS:
11 Yes, Your Honor, I believe . . .

12 MR. NASH:
13 I think that's correct.

14 MR. THOMAS:
15 Yes, Your Honor.

16 HEARING OFFICER BRADY:
17 I didn't mean to put it that way.

18 MR. THOMAS:
19 Pardon?

20 HEARING OFFICER BRADY:
21 July 27. Two weeks would be Friday, August 10?

22 MR. NASH:
23 Your Honor, I am going on vacation from August 3
24 until August 11. Could we have it due maybe
25 sometime that next week?

1 HEARING OFFICER BRADY:

2 The 10th to the when?

3 MR. NASH:

4 No. I'm leaving the 3rd and coming back the 11th.

5 HEARING OFFICER BRADY:

6 Oh, okay. And you're requesting what, Mr. . . .

7 MR. NASH:

8 To have it due maybe a couple of days after I get
9 back, maybe the 14th or 15th.

10 HEARING OFFICER BRADY:

11 What about Friday the 17th?

12 MR. THOMAS:

13 Judge, that would be wonderful if the Court
14 would . . .

15 HEARING OFFICER BRADY:

16 That would suit you?

17 MR. THOMAS:

18 Yes, sir.

19 HEARING OFFICER BRADY:

20 All right. Then let's say posthearing memoranda
21 due August 17, Friday close of business. All
22 right. Gentlemen, what I like in the posttrial
23 briefs, and you can call it - I don't care what
24 you call it - posttrial memoranda, posttrial
25 brief, I'm not talking or thinking about a

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treatise brief. It really is more in the lines of a written closing statement from the simple perspective of we all sat here. We heard and saw, presumably, the same things. Now, you all tell me, from your perspectives, what decision you think I should make and why. Okay? Basically pull it together for me, whatever the issues are, whatever you have to do to explain to me where you want me to go and why you want me to go there or the conclusion that you want me to give. If that means that you need to counter an issue that they've raised that you think is irrelevant, then do that, whatever it takes to do it. If there are cases applicable that you wish to cite, then please provide a copy of the case cited. I won't limit you to any number of pages, but I'm not anticipating that these would be terribly long.

MR. THOMAS:

Your Honor, if I may interject, I think the Order did specify a maximum of 25 pages, the February 25 Order.

HEARING OFFICER BRADY:

Well, if you want to know the truth, I can't imagine you going 25 pages . . .

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MR. NASH:

If we must, . . .

MR. THOMAS:

If we must, Judge, we will do so, but . . .

HEARING OFFICER BRADY:

. . . or anywhere near it, but I'm just trying to give you an idea. I do not expect, you know, an exhaustive researched appellate brief. You know, pull it together for me. Cite whatever testimony, data, charts, evidence you need to cite and tell me what conclusions you think I need to reach and why. You know, it's really as simple as that; not any more complicated than that. I'll go around a final time. Any comments, Mr. Nash, of any type, comments, questions?

MR. NASH:

No, Your Honor.

HEARING OFFICER BRADY:

Mr. Thomas?

MR. THOMAS:

No, Your Honor, other than we would, once again, renew that motion for a directed verdict that we had made at the close of the . . .

HEARING OFFICER BRADY:

Consider it made and accepted and it will be taken

1 under consideration.

2 MR. THOMAS:

3 Thank you, Your Honor.

4 HEARING OFFICER BRADY:

5 Anything for Mr. Pinney?

6 MR. PINNEY:

7 No, Your Honor.

8 HEARING OFFICER BRADY:

9 Having gotten this close to quitting, I do have a
10 question, and I guess I'll start with Mr. Thomas.
11 It's really by statement of counsel for the
12 response, and I'll start with Mr. Thomas, because
13 I believe it was you who elicited the testimony.
14 That topographical map that showed the Point . . .

15 MR. THOMAS:

16 Yes, Your Honor.

17 HEARING OFFICER BRADY:

18 . . . and, if the map is right here and the Point
19 is over here, then you had Mr. Taylor, I believe,
20 draw a squiggly line up to it.

21 MR. THOMAS:

22 That's correct.

23 HEARING OFFICER BRADY:

24 What is the status of that alleged right-of-way or
25 road or roadbed or whatever that is?

1 MR. THOMAS:

2 Judge, it's our position that the property owner
3 who owns that property that provides access along
4 the road that was drawn by Mr. Taylor is owned by
5 Michael Hanley.

6 HEARING OFFICER BRADY:

7 Okay.

8 MR. THOMAS:

9 In his affidavit, which you said you would take
10 under consideration as to whether or not to
11 permit, he indicates there is no road there, and
12 there is no access there, and it has always been
13 the position both of Mr. Taylor - he indicates
14 there is no access to his property. He has no
15 easement. A review of the Clerk's records in the
16 Clark County Clerk's Office indicates that there's
17 no easement. We have nothing recorded. There
18 were some pictures that were provided. I think
19 they're in the record from previous testimony. We
20 dispute that there's a road there. We dispute
21 there's any way to get down there.

22 HEARING OFFICER BRADY:

23 Okay.

24 MR. THOMAS:

25 I have not personally gone down there, but the

1 landowner has assured me, Mr. Hanley, that there's
2 no way that he can get down there.

3 HEARING OFFICER BRADY:

4 But have you examined the real estate records in
5 the County Clerk's Office?

6 MR. THOMAS:

7 Yes, Your Honor, I have.

8 HEARING OFFICER BRADY:

9 And, from that examination, you would proffer to
10 me, as an Officer of the Court, that there are no
11 recorded easements provided for that?

12 MR. THOMAS:

13 None that we could find, Your Honor.

14 HEARING OFFICER BRADY:

15 All right. Mr. Nash, what use would you have me
16 make of that? What does that . . .

17 MR. NASH:

18 Well, we think this is important, Your Honor, and
19 let me start where you left off about easements.
20 Mr. Taylor has never claimed, doesn't claim today,
21 that he has any easement or has any reasonable
22 prospect of ever getting one. That has always
23 been his position. As I understand the issue,
24 though, the issue is not whether Vaughn Taylor has
25 reasonable access. The issue is whether Clark

1 RECC has reasonable access and that's why we
2 showed their contract that gives them a perpetual
3 easement over all these landowners' land,
4 including Mr. Hanley, to build, maintain, extend
5 service, clear brush, clear trees. So our
6 position is that, whether or not he has an
7 easement is really not the issue. It's whether
8 they do, and they do. Now, as for the condition
9 of that road that was drawn, we've taken
10 photographs of sections of that road, and they've
11 been submitted in the record, . . .

12 HEARING OFFICER BRADY:

13 Okay.

14 MR. NASH:

15 . . . and you have copies . . .

16 HEARING OFFICER BRADY:

17 Okay.

18 MR. NASH:

19 . . . just like I do that show the condition . . .

20 HEARING OFFICER BRADY:

21 All right.

22 MR. NASH:

23 . . . and he has testified about it in his
24 rebuttal testimony.

25

1 HEARING OFFICER BRADY:

2 Okay.

3 MR. NASH:

4 What they submitted from Mr. Hanley and, as you
5 heard him say today, today you could not drive a
6 vehicle from Mr. Hanley's residence to the Point.
7 There's a little bit of work that needs to be
8 done. There's one culvert that needs filling in;
9 there are some saplings that need clearing; and
10 there's some chainsawing that needs to be done,
11 and that's what Mr. Hanley says in his affidavit.
12 He says, "You cannot drive a vehicle down there
13 today." The purpose of our pictures and of his
14 testimony is to show the Court that, with a
15 relatively minor amount of work, you certainly can
16 drive a vehicle down there.

17 HEARING OFFICER BRADY:

18 All right. That's something that both of you,
19 then, can respond to more fully in your written
20 arguments, but I was confused, and I wasn't quite
21 sure what use each side was making of that. So
22 you feel free and should put that in your written
23 comments. If there's nothing else, then, tell
24 your witnesses that I found them prepared and paid
25 attention, which I appreciated, and I will say to

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counsels that I thought you all were prepared, that you proceeded expeditiously in a very professional manner, and, as Mr. Pinney knows, I do not always say that at the end of a hearing either about the witnesses or about the attorneys, but, in this case, I think you all presented it very well and very effectively, and I appreciate it. You're both welcome back any time.

MR. THOMAS:

Thank you, Your Honor.

HEARING OFFICER BRADY:

If there's nothing else, case is adjourned.

MR. THOMAS:

Thank you, Your Honor.

FURTHER THE WITNESSES SAITH NOT
HEARING ADJOURNED
OFF THE RECORD

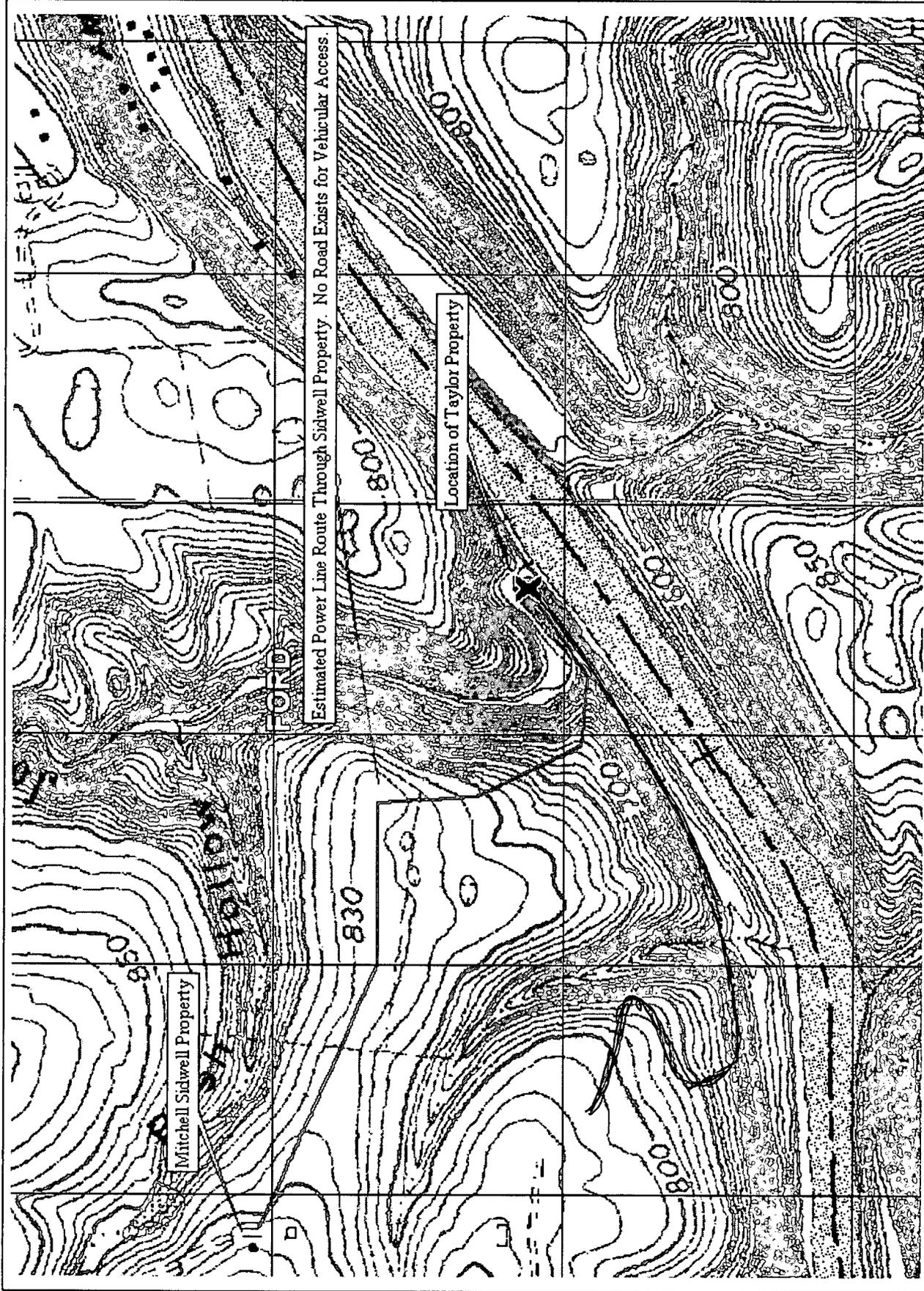
1 STATE OF KENTUCKY
2 COUNTY OF FRANKLIN

3
4 I, Connie Sewell, the undersigned Notary Public, in
5 and for the State of Kentucky at Large, do hereby
6 certify the foregoing transcript is a complete and
7 accurate transcript, to the best of my ability, of the
8 hearing taken down by me in this matter, as styled on
9 the first page of this transcript; that said hearing was
10 first taken down by me in shorthand and mechanically
11 recorded and later transcribed under my supervision;
12 that the witnesses were first duly sworn before
13 testifying.

14 My commission will expire November 19, 2001.

15 Given under my hand at Frankfort, Kentucky, this the
16 26th day of July, 2001.

17
18
19 Connie Sewell
20 Connie Sewell, Notary Public
21 State of Kentucky at Large
22 1705 South Benson Road
23 Frankfort, Kentucky 40601
24 Phone: (502) 875-4272
25



Sidwell Property and General Location of Proposed Power Line Route

PENGAD-BAYONNE, N. J.

EXHIBIT
Chart
 1